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Letter dated 20 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 28 January 2004 (S/2004/94). The Counter-Terrorism Committee has received the attached fourth report from Argentina submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

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Annex

[Original: Spanish]

Note verbale dated 19 April 2004 from the Permanent Mission of Argentina to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

The Permanent Mission of the Argentine Republic to the United Nations presents its compliments to the Chairman of the Counter-Terrorism Committee of the United Nations Security Council and, in response to its note, has the honour to present the attached report of Argentina, and its annex I, (legislation) (see enclosure).

The Permanent Mission of the Argentine Republic to the United Nations takes this opportunity to convey to the United Nations Counter-Terrorism Committee the renewed assurances of its highest consideration.

Enclosure*

Report of the Argentine Republic in response to the note of 16 January 2004

In his note S/AC.40/2004/MS/OC.371 of 16 January 2004 the Chairman of the United Nations Security Council Committee established pursuant to resolution 1373 (2001) (Counter-Terrorism Committee) transmitted to the Government of the Argentine Republic comments and questions raised by the third report submitted by Argentina pursuant to paragraph 6 of the resolution, which was duly published as a document of the Security Council (S/2003/719). Those comments and questions focused on implementation measures taken in relation to the effective protection of the financial system and on the effectiveness of counter-terrorism instruments; customs, border and immigration controls; and controls introduced to prevent terrorists from gaining access to weapons.

Below are the replies to the Committee's questions, in the order established in the note.

Attached as annex is a list of legislation not included in this or previous reports.

1. Implementation measures

Effectiveness in the protection of the financial system

1.1 Regarding the effective implementation of subparagraph 1 (a) of the resolution, the Committee would appreciate knowing whether the Argentine Republic provides its administrative, investigative, prosecutorial and judicial authorities with specific training aimed at enforcing its laws in relation to:

- **Typologies and trends aimed at countering terrorist financing methods and techniques;**
- **Techniques for tracing property which represents the proceeds of crime or which is to be used to finance terrorism, with a view to ensuring that such property is frozen, seized or confiscated.**

Please also outline the relevant programmes and/or courses in these areas. The Committee would further appreciate receiving information regarding any mechanisms/programmes that the Argentine Republic has put in place to train its various economic sectors in the detection of unusual and suspicious financial transactions related to terrorist activities and in the prevention of the movement of illicit money.

The Financial Intelligence Unit (UIF), the Office of the Attorney General and the Central Bank of the Argentine Republic (BCRA) have organized and participated in a number of training courses.

During 2003 the UIF undertook a significant number of such activities, with the participation of authorities and officials of investigatory, judicial and legislative

* Annex I is on file with the Secretariat and is available for consultation.

administrative agencies, aimed at: (i) highlighting the techniques and methods commonly used in money-laundering operations; (ii) outlining the main instruments for the prevention of money-laundering; (iii) promoting initiatives for cooperation between the main authorities involved in efforts to combat money-laundering; (iv) highlighting the relevant steps taken at the national level; and (v) presenting case studies.

The main steps taken during 2003 notably include the following:

- Seminar on the prevention of money-laundering, organized jointly by the UIF and the Department of Postgraduate and Further Education Studies in the Faculty of Law and Political Sciences of the Catholic University of Argentina (UCA).
- International seminar on "Combating money-laundering through the judicial system", held at the headquarters of the Department of Planning for the Control of Drug Addiction and Drug Trafficking.
- International seminar on "Preventing the laundering of assets in the exchange and financial markets", organized by the Argentine Chamber of Exchange Houses and Agencies (CADECAC).
- Seminar on "Preventing money-laundering", organized jointly by the UIF, the Bank of Córdoba Province and the Córdoba Economic Sciences Trade Council.
- Course on "Economic crime in Argentina", organized by the Centre for the Investigation and Prevention of Economic Crime (CIPCE).
- "Fourth conference on the unlawful use of, and illicit trafficking in drugs", held at the University Institute of the Argentine Federal Police (PFA).
- Seminar on "The laundering of assets of criminal origin: new responsibilities in the fight against business crime", organized by the Santa Fe Stock Exchange and the Litoral Stock Exchange.
- Seminar on "Preventing and controlling the laundering of assets of criminal origin", organized jointly by the UIF and the Law School of the Judges and Court Officials Association of the National Courts.
- Workshops on "Technological development and transparency in information and operations: their importance for the future of securities markets", organized and sponsored by Spain's Ibero-American Securities Exchange Institute and Peru's National Companies and Securities Control Commission.
- Training course on "Preventing the laundering of assets" aimed at all UIF staff.
- Seminar on "New challenges in the fight against money-laundering", organized jointly by the Banco de la Nación Argentina and the British Embassy in Buenos Aires.
- Seminar on "Controlling money-laundering", organized by the Argentine Insurance Companies Association, the Union of Employment Risk Insurers and the Argentine Life and Pension Insurers' Association.
- Postgraduate course in "Preventing the laundering of assets", University of El Salvador.

The Office of the Attorney General also held the following courses in Buenos Aires in 2003:

- "Advanced course on the investigation of money-laundering", organized by the National Office of Crime Policy, of the Ministry of Justice and Human Rights; the Inter-American Drug Abuse Control Commission of the Organization of American States (OAS/CICAD) and France's Martinique-based Inter-ministerial Drug Control Training Centre (CIFAD), aimed at officers of the National Police Force (ENP), the Argentine National Gendarmerie (GNA), the Argentine Coast Guard (PNA), the Customs Office (DGA), the Public Prosecutor's Office and the UIF.
- "Financial supervisors' forum", which highlighted the need to adopt mechanisms for preventing and countering the funding of terrorist organizations and their members, organized by the Financial Action Task Force on Money-Laundering in South America (GAFISUD).

BCRA has held joint seminars on money-laundering and the funding of terrorism at the Association of Foreign-owned Argentine Banks (ABA), the Association of Argentine Private Banks (ADEBA), the Argentine Chamber of Exchange Houses and Agencies (CADECAC), and the University Institute of the PFA.

1.2 Regarding subparagraph 1 (a) of the resolution, the Committee would appreciate learning whether the Financial Intelligence Unit (UIF) has been provided with sufficient resources (human, financial and technical) to carry out its mandate. Please provide appropriate data in support of your response.

The structure of the UIF is as follows:

(a) *Board of Directors*: composed of five members, appointed by a competitive selection process.

(b) *Executive Secretariat*: responsible for coordinating all actions carried out by the UIF in accordance with the decisions and directives adopted by the plenary meeting. Comprises 12 members.

(c) *Department of Legal Affairs*: responsible for issuing opinions on all operational reports received under the administrative penal regime provided for in chapter IV of Act No. 25,246. Comprises five lawyers specialized in penal, administrative, civil and commercial law.

(d) *Data-Analysis Department*: primarily responsible for the analysis, processing and transmission of information with a view to preventing and stopping the laundering of the proceeds of crime, as well as collaborating on criminal prosecution. Comprises 17 specialists in economic, financial and legal matters.

(e) *Department of Institutional Relations*: handles all matters concerning relations with other bodies (public, national, provincial, municipal, international or foreign) and with individuals or entities (public or private), and concerning the formulation and implementation of training and education plans developed by the UIF. Comprises five professionals who are specialists in various areas of social sciences.

(f) *Department of Security and Information Technology Systems*: essentially responsible for designing, developing and managing the computer systems of the UIF, as well as assuring their security. Comprises six experts on hardware and software management, as well as security technology.

As regards technical resources, the UIF is equipped with four servers and 51 computers, as well as high-speed printers, scanners, anti-virus protection and other security tools (firewalls).

The purchase of this equipment made it possible to set up the current data network of the UIF. The network has been enhanced by the addition of information stored in the databases of the different agencies that are obliged under Act No. 25,246 to provide information required by the UIF within the context of its efforts to analyse, process and transmit data with a view to preventing and stopping the laundering of the proceeds of crime. In this regard it should be noted that the request by the UIF to access the databases of the different agencies or entities has led to disputes in connection with secrecy laws (essentially laws related to banking and taxation).

A computer application for the investigation of cases is currently being developed, and the first module is already complete. The application will initially be used to store the data contained in suspicious transaction reports (STRs), and will later be distributed to all system staff, so that they can enter the data directly into the system and generate the reports, which will then be sent in diskette form.

The UIF is also equipped with a closed-circuit television system comprising around a dozen television cameras and other equipment, which allows live monitoring of activity and movements in and around the UIF premises.

With respect to financial resources, it should be noted that according to its terms of reference the UIF answers to the Ministry of Justice, Security and Human Rights. This means that it does not enjoy budgetary autonomy; budgeted funds are administered by the Ministry in accordance with the decisions adopted by the UIF itself.

For the 2003 financial year the UIF budget was 4,500,547 pesos, while 20 million pesos has been allocated to the Unit's operations out of the 2004 national budget.

The UIF still lacks the human, technological and financial resources it needs to fulfil its mandate in a comprehensive and efficient manner and to devise a plan that will incorporate the new technologies (basically of three types: investigation-support systems, staff monitoring systems and an overall administrative system) required to design and fully integrate the Unit's data system.

1.3 The Committee would appreciate learning the procedure followed by the General Inspectorate of Justice to ensure that the resources collected by charitable, religious and other associations are not diverted for uses other than those intended and in particular for terrorism. How is coordination achieved in this area between the monitoring agency and the other criminal investigation agencies? Are there procedures to deal with requests from other Member States to investigate particular organizations that are suspected of having terrorist links?

Civil associations and foundations legally domiciled within the jurisdiction of the city of Buenos Aires are subject to permanent financial oversight by the General Inspectorate of Justice (art. 10 (b), Act No. 22,315). This oversight is exercised through the Department of Civil Associations and Foundations and the Department of Accounting Control, which perform the following tasks:

- Analysis of the accounts that the various entities are required to submit annually, after the accounts have been approved by each entity's respective supervisory body.

In the specific case of foundations, these Departments ensure that they have carried out the activities set out in the report attached to the previous year's financial statement (art. 26 (c), Act No. 19,836 on foundations).

In the case of all associations and foundations, the two Departments verify whether most of the funds have been used to carry out the scheduled activities, whether the balance sheet shows evidence of transactions that do not conform to the purpose of the entity concerned, and whether the balance sheet or the report indicates that certain relationships or contracts with commercial enterprises may not have been entered into or concluded for the common good. In such cases, the entity is informed of the dubious items or headings and is required to explain all such acts or omissions. If the reply is not satisfactory, informal proceedings are instigated, involving inspections of a legal and accounts-based nature. The inspections are carried out at the headquarters of the association or foundation concerned. The accounts and supporting documents of the entity in question are analysed (art. 6, Act No. 22,315) and then the other entities involved (whether non-profit or profit-making organizations) are investigated. Once the investigation is completed, the decision is made as to whether sanctions will be applied to the association or foundation concerned. The penalties range from a simple disciplinary measure to a request for the Ministry of Justice to withdraw the entity's legal status and liquidate its assets (arts. 12, 14 and 10 (j)). If the other entities concerned fall within the purview of the Inspectorate, they are subject to similar penalties.

In the case of companies, a request is made for intervention or for dissolution and total liquidation, in accordance with arts. 301-303, Act No. 19,550 on commercial enterprises.

Article 301: "The supervisory authority may exercise oversight functions within public companies not included under article 299, in any of the following cases:

(1) When a request is submitted by shareholders representing 10 per cent of paid-up capital or by any company auditor. In such cases only the facts underlying the presentation shall be addressed.

(2) When, based on a properly substantiated decision, such oversight is deemed necessary in the public interest.

Article 302: In the event that a law, statute, or regulation is violated, the supervisory authority may impose the following penalties:

(1) Disciplinary measure;

(2) Public disciplinary measure;

(3) Imposition of fines on the company, its directors and its auditors.

Such fines may not be greater than 6,000 pesos (approx. $6,000) in total per offence and shall increase according to the gravity of the offence and the capital of the company. When fines are imposed on directors or auditors, they may not be paid by the company.

The National Executive Power shall be empowered, through the Ministry of Justice, to adjust the fine amounts on a weekly basis, based on fluctuations in the general wholesale price index, as determined by the National Institute of Statistics and Censuses.

Article 303: "The comptroller shall be empowered to request from the judge competent in commercial matters in the domicile of the company concerned:

(1) The suspension of the decisions of the company's constituent bodies, if such decisions are contrary to a law, statute or regulation;

(2) The intervention of administration in cases covered by the previous paragraph, if the company concerned has made a public offering of its shares or bonds or has carried out capitalization or savings operations or in any form seeks money or securities from the public with the promise of future loans or profits, and if article 301, paragraph 2, applies. The purpose of such intervention shall be to remedy the facts that made the intervention necessary and, if this is not possible, to proceed to dissolution and liquidation;

(3) Dissolution and liquidation, in the cases referred to in paragraphs 3, 4, 5, 8 and 9 of article 94, and liquidation in the case of paragraph 2 of the same article."

In the case of an entity that is controlled by another body or jurisdiction, the Ministry of Justice shall be requested to seek the appropriate penalty for the controlling authority. If at any stage of the proceedings there are genuine grounds to suspect illegal tax transactions or the laundering of the proceeds of crime, certified copies of the proceedings shall be made and transmitted either to the Federal Administration of Public Income (AFIP) or to the UIF (Act No. 25,246, art. 12), respectively.

- Inspections may also be performed through random sampling or reports by individuals concerning non-profit entities, and the procedure described above shall be applied.

With respect to procedures for processing requests made by other States with a view to investigating operations suspected of being linked to terrorism, specific regulations have not yet been adopted. Requests are sent, on a confidential basis, directly from the Ministry of Justice to the General Inspectorate of Justice, through the Minister responsible for the General Inspectorate of Justice, who is solely responsible for ordering the procedures described above. However, the officials assigned to these tasks shall not be informed of the grounds for the procedures.

1.4 As regards the implementation of subparagraphs 1 (a) and (d) of the resolution, the Committee would be grateful if the Argentine Republic would provide statistics on the number of cases where sanctions for providing support to terrorists or terrorist organizations were imposed on financial and non-financial institutions. Do authorities in the Argentine Republic audit financial institutions to verify compliance with

requirements to submit suspicious transaction reports? Are foreign exchange houses and remittance agencies routinely audited? How often are financial institutions subject to such audits?

With respect to the detection of suspicious or unusual financial transactions related to the movement of the proceeds of crime, the BCRA has adopted rules for the "prevention of money-laundering and other illicit activities". These rules are not aimed specifically at terrorist activities in particular but, because of their general nature, they do cover those activities. They are additional to the special measures established by the UIF, which are mandatory for all professional intermediaries. The rules establish a set of guidelines that govern the opening of accounts, the maintenance of a database containing information on individuals performing transactions of $10,000 or more, and the information to be provided when suspicious transactions are detected. They impose a $50,000 limit for cheques paid in person, as well as the requirement for disbursements greater than $50,000 to be payable in account.

The BCRA maintains a database of suspicious transactions based on input from the national financial system (in line with the aforementioned rules), as well as a database of individuals and entities linked to terrorism in the lists disseminated through regularly distributed "B" Communications.

The internal procedural regulations — which are set out in annexes I, II and III "Confidential" — set out the various steps to be taken by the competent units in each case.

Compliance with auditing rules is required under a supervisory regime universally adopted by the Superintendency of Financial and Exchange Entities. Focused on risk, the regime comprises a permanent oversight system that combines off-site monitoring and on-site inspection or verification in the entity itself. The inspection strategy applied to each particular entity focuses on its respective operational system and is directly dependent on prior evaluation of its internal control environments and oversight controls.

The procedures are set out in a supervision manual comprising a "Guide to Procedures for the Monitoring and Certification of Financial Entities" (off-site monitoring), an "Inspection Manual" (on-site monitoring) and a section on "Other Procedures". The last-mentioned includes "Procedures for Monitoring the Prevention of Money-laundering", which are routinely updated. It should be noted that although they are not aimed specifically at terrorist activities in particular, these procedures do cover such activities because of their general nature.

It should also be noted that exchange houses, agencies, offices and brokers are also subject to especially designed minimum rules on external audits and internal controls (Communication "A" 3948), and that investigations have been carried out at remittance agencies, in response to duly submitted reports.

Thus far, no suspicious transactions linked to the aforementioned Communications have been identified.

1.5 In regard to subparagraph 1 (a) of the resolution, the Committee would appreciate knowing the number of suspicious transaction reports (STRs) received by the Argentine UIF and other competent authorities, with particular regard to STRs, from:

- **The insurance sector;**
- **Money remittance/transfer services;**
- **Exchange houses**.

Please also indicate the number of STRs analysed and disseminated, as well as the number of those that have led to investigations, prosecutions or convictions.

The following table shows the number of STRs received by the UIF.

Data for STRs (up to 22 January 2004)

Number of reports received:

Suspicious transaction reports	483
Collaborations	40
Total	**523**

By type of reporter:

Federal Administration of Public Income (AFIP)	67
National Securities Commission (CNV)	3
Central Bank of the Argentine Republic (BCRA)	13
National Superintendency of Insurance	5
Publicly listed companies	1
Financial sector	306
Insurance sector	27
Armoured-truck security firms	1
Funds transfer houses	45
Bingo halls	5
Judiciary	2
Voluntary declarations	8
Total	**483**

1.6 Within the context of the effective implementation of subparagraph 1 (a) of the resolution, the Committee would be grateful for an explanation of the rules for identifying persons or entities which maintain bank accounts, on whose behalf a bank account is maintained (i.e. the beneficial owners), or who are the beneficiaries of transactions conducted by professional intermediaries, as well as any other person or entity connected with a financial transaction. Please outline any procedures that enable foreign law enforcement agencies or other counter-terrorist entities to obtain such information in cases where terrorist links are suspected.

For the identification of persons and entities covered by paragraph 1 (a) of the aforementioned resolution 1373 (2001), the BCRA applies standards for "current identification documents", which are universal in nature and thus applicable to the said section.

The National Superintendency of Financial and Exchange Entities has also signed memoranda of understanding with the Bank of Spain, the Central Bank of Brazil, the United States Federal Reserve Bank, the National Superintendency of Chile, the National Banking and Securities Commission of Mexico, the United

Kingdom's Financial Services Authority (FSA), Germany's Federal Securities Supervisory Authority (BAK) and the Bank of Italy. Outside these agreements there are no problems regarding the exchange of information, and supervisors from other jurisdictions experience no difficulties in carrying out their work in the Argentine Republic, provided that they make a commitment to respect banking secrecy rules.

As indicated in previous reports, the lists drawn up by the Security Council regarding persons or entities linked to terrorist activities are incorporated into domestic law through a resolution of the Ministry of Foreign Affairs, International Trade and Worship. They are then published in the Official Gazette, thereby triggering the requirement to freeze the funds in question.

Thus, the BCRA reports to the financial system through Communications, listing the relevant assets, and the intermediaries concerned are required to declare whether or not such assets exist.

In addition, for information purposes, the Ministry of Foreign Affairs transmits lists received from other Governments containing the persons or entities identified as terrorists under their law. The BCRA then instructs the financial system to inform it whether or not assets exist in their names.

The texts of the said Communications are published on the official BCRA web site, http://www.bcra.gov.ar. They can be accessed by clicking on "*normativa*" and then "*Comunicaciones*".

1.7 In relation to money-laundering and the financing of terrorism the Committee would be grateful to receive an outline of any special strategy that the Argentine Republic may have developed with a view to enabling its investigatory agencies effectively to prevent resources from being transferred to terrorists (e.g. under-invoicing of exports and the over-invoicing of imports, manipulation of high value goods like gold, diamonds, etc.). What appropriate mechanisms has the Argentine Republic created (e.g. a "task force") to ensure adequate cooperation and information sharing among the various government agencies that may be involved in investigations of terrorist financing (e.g. police, customs, UIF and/or other competent authorities)?

See response to question 1.11, above.

1.8 The Committee also notes from the first report of the Argentine Republic (pp. 6 and 7) that, for the purposes of implementing the resolution and preventing terrorist activities, the Argentine Republic uses the lists issued pursuant to Security Council resolutions 1267 (1999) and 1333 (2000).

Does the Argentine Republic have the authority to freeze the assets of terrorists and terrorist organizations that are not on those lists? The Committee would appreciate receiving copies of the laws and regulations that are relevant to this area.

There are two grounds for freezing assets: (a) a United Nations Security Council resolution and (b) a decision by the competent judicial authority, which may be made pursuant to judicial cooperation with a foreign State.

In the latter case the order must specify the persons, groups or organizations subject to the freezing measure; include a description of the facts, defined according to the criminal offences provided for in Argentine legislation; demonstrate the existence of a genuine illicit act, including the grounds for the charge made against those targeted by the measure; and show any other evidential factor that might prove the use of assets to support, facilitate, plan, prepare or finance terrorist acts.

When the order is issued directly by a competent judge, the law of criminal procedure authorizes the said judge to freeze the assets, if there are grounds in criminal law to justify such a measure, with the intention of preventing or stopping the further consequences of a crime (Code of Penal Procedure (CPP), art. 183), securing the evidence that the author has committed the crime, ensuring that neither the crime nor the author benefits from the proceeds or fruits of the crime, and ensuring that the victims are properly compensated, all with the authority accorded by the law on the sequestering of objects (CPP, 231) or the law on the preventive seizure of property for the purpose of confiscation (CPP, 518 and Penal Code, art. 23).

When the order is issued by a foreign judicial authority, the freezing measure may be imposed in application of the existing agreement with the requesting State on assistance in criminal matters or, if there is no such agreement, in application of Act No. 24,767 on international cooperation in criminal matters.

In regard to compliance with subparagraph 1 (c) of the resolution, could the Argentine Republic provide the Committee with statistics showing how much property was frozen, seized, and/or confiscated in relation to the financing of terrorism? Could the Argentine Republic provide this information in regard to individuals or entities designated in lists produced by any or all of the following:

— Security Council;

— Argentine Republic;

— Any other States or international organizations?

So far, there have been no cases of freezing, seizure or confiscation in relation to the financing of terrorism in the jurisdiction of the Argentine Republic.

– Please also outline the procedure used to proscribe foreign terrorist organizations (other than those listed by the Security Council), if any, as well as data for the number of organizations involved and/or corresponding examples. How long does it take to proscribe a terrorist organization at the request of another State, or based on information supplied by another State?

Apart from the existing mechanisms to withdraw recognition of the legal personality of the listed organizations, there is no procedure in place to proscribe illegal organizations. At any rate, if the request for proscription comes from a foreign judicial authority, it may be covered by the act on international cooperation in criminal matters, provided that it is compatible with Argentine domestic laws.

In this regard, it should be recalled that article 210 of the Penal Code provides penalties for anyone who takes part in an illicit association "simply for being a

member of the association". This offence could be used for purposes equivalent to the proscribing of a terrorist organization in Argentine domestic law.

1.9 In regard to the implementation of subparagraphs 1 (a) and (c) of the resolution as well as article 8 of the International Convention for the Suppression of the Financing of Terrorism, the Committee would be grateful if the Argentine Republic would outline its principal legal procedures concerning the confiscation of assets or the operation of other attachment mechanisms. Please describe how these procedures operate in practice and please indicate which authorities are responsible for their implementation. Please also advise whether under Argentine law it is possible to confiscate the proceeds of a crime without first obtaining the conviction of its perpetrator (i.e. *in rem* confiscation)? If not, does the Argentine Republic envisage introducing such a system? The Committee would welcome receiving a description of the considerations which would normally form part of a review of the decisions taken by the authorities referred to earlier in this paragraph.

The confiscation of assets following the commission of a crime is a preventive measure provided for in the CPP and in the codes of criminal procedure of all Argentine provinces.

Article 231, CPP — Seizure of property

"The judge may order the seizure of items related to the crime, items subject to confiscation or items that may serve as evidence.

"However, this measure shall be ordered and executed by officers of the police or security forces when such items are discovered in the course of a raid, personal seizure or inspection within the terms of article 230 bis. Such actions shall be recorded in the appropriate document and the competent judge or inspector shall immediately be informed of the procedure carried out."

Article 518, CPP — Preventive attachment

"When issuing the indictment, the judge shall order the attachment of the property of the defendant or, where applicable, of the individual subject to a civil action, in an amount sufficient to cover the fine, civil compensation and costs.

"If the defendant or the individual subject to a civil action has no property, or if the confiscated amount is insufficient, he or she may be subject to an inhibition order.

"However, the preventive measures may be imposed prior to the indictment if it would be dangerous to delay and if the grounds for conviction are sufficiently strong to justify such a measure."

The procedure requires the issuing of an order by the competent judge to the public or private administrative authority charged with the registering of the property, bailment of the funds or safeguarding of the securities of the individual concerned.

The authority responsible for taking these measures is the judge competent in criminal matters.

As indicated in 1.9 above, it is also possible to confiscate, seize or attach the proceeds of the crime before the perpetrator is sentenced, in order to ensure that the crime does not yield benefits to the perpetrator. Article 183 of the CPP, previously cited, stipulates that "the police or the security forces shall at their own initiative investigate crimes involving public right of action, pursuant to a complaint or by order of the competent authority; ensure that the acts committed do not lead to further consequences; identify the culprits; and gather the evidence to support the charge". The law is interpreted in such a way that, a fortiori, the same power is also vested in judges, who must ensure that the crime does not yield benefits. The Supreme Court of Justice has ruled to this effect on many occasions and the underlying legal doctrine is universally supported.

– **Please describe how the Argentine Republic deals, in its laws and procedures, with requests from foreign States for international legal assistance in relation to confiscation measures arising out of terrorist offences.**

The laws of the Argentine Republic include Act No. 24,767, on international cooperation in criminal matters, which provides that the broadest assistance shall be given to the requesting State, without the need for a relevant bilateral agreement. The Act applies on a supplementary basis if an applicable bilateral or multilateral treaty exists, and is used to interpret the text of treaties and to regulate matters not covered by them. If no such treaty exists, the criminal legal assistance procedure is governed exclusively by the Act, on the basis of reciprocity (arts. 2 and 3).

In accordance with the provisions of this Act, assistance must also be given even in cases where the actions on which the request is based do not constitute crimes under Argentine law, on the following conditions: that there is compliance with the provisions of the articles governing assistance, such as the existence or offer of reciprocity; that the request does not relate to offences of a political nature or offences exclusively under military law; that the request has not already been dealt with by a special commission on acts prohibited by the Argentine Constitution; and that the request has not been made to facilitate the prosecution of a person on the grounds of race, nationality, etc. It should be noted that the Act states specifically that acts of terrorism are not regarded as political crimes.

An exception to the above arises when the purpose of the request is the application of measures such as the confiscation of property, search of domicile, surveillance of persons, interception of mail and telephone tapping (art. 68).

Act No. 24,767 similarly provides that Argentine law shall govern the conditions and forms in which the requested measures are implemented. In the event that the requesting State desires a special procedure, it must make a special request to that effect, and the request shall be granted provided that it does not violate the constitutional guarantees of the Argentine Republic.

If the assistance leads to an intervention by a judge, the Office of the Public Prosecutor shall make the case for assistance during the judicial proceedings.

Chapter 3, Title I, of the aforementioned Act (arts. 95-101) regulates compliance with legal decisions to impose fines or confiscate property made in a foreign country, providing that such decisions shall be submitted through the diplomatic channel, that the procedure shall be governed by domestic laws, that preventive measures may be adopted during the procedure, and that extraordinary

costs incurred in implementing the decision shall be borne by the requesting State. The Public Prosecutor's Office shall speak for execution during the judicial proceedings.

Article 96 stipulates that the Ministry of Foreign Affairs, International Trade and Worship may reach an agreement with the requesting State, on the basis of reciprocity, that part of the money or property obtained pursuant to implementation of the ruling shall belong to the Argentine Republic.

1.10 The Committee would appreciate receiving a progress report on:

Enactment of draft legislation (p. 4 of the third report) based on the work of the inter-ministerial committee;

The ratification of the remaining international conventions and protocols relating to terrorism to which the Argentine Republic has yet to become a party;

The implementation in domestic law of international instruments relating to terrorism which the Argentine Republic has already ratified, with particular regard to a list — created to meet the requirements of the Conventions and Protocols — of the penalties prescribed for offences.

The previous reports of the Argentine Republic referred to the work of the Commission established pursuant to resolution 189/2002 of the then Ministry of Justice and Human Rights. With the arrival of the new Government in May 2003, the Advisory Committee on Penal Reform was established (Executive Decree No. 357 of 10 July 2003, published in the Official Gazette on 11 July 2003). The Advisory Commission's mandate includes completing the process of adapting the provisions of domestic law to international obligations on the fight against terrorism and its financing, through the new draft being reviewed by the Ministry of Justice, Security and Human Rights.

Under the draft, a new offence, which includes the financing of terrorist associations, will be added to the offence of unlawful association.

As regards international instruments relating to terrorism, the Argentine Republic has, since submitting its last report, ratified the International Convention of 15 December 1997 for the Suppression of Terrorist Bombings, which was adopted on 25 September 2003 by Act No. 25,762. It has also acceded to the Protocol of 10 March 1988 for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental Shelf, which was adopted on 26 November 2003 by Act No. 25,771. Consequently, both instruments are now in force in Argentina.

The International Convention of 9 December 1999 for the Suppression of the Financing of Terrorism has received partial approval from the Senate and is currently being studied by the Chamber of Deputies.

Effectiveness of counter-terrorism machinery

1.11 Effective implementation of legislation related to covering all aspects of Security Council resolution 1373 requires States to have in place effective and coordinated executive machinery, as well as to create and utilize adequate national and international counter-terrorist strategies. In

this context the Committee would appreciate knowing whether the Argentine Republic's counter-terrorism strategy and/or policy targeting (at the national and/or subnational level) deals with the following forms or aspects of counter-terrorist activity:

- **Criminal investigation and prosecution;**
- **Counter-terrorist intelligence (human and technical);**
- **Special forces operations;**
- **Physical protection of potential terrorist targets;**
- **Strategic analysis and forecasting of emerging threats;**
- **Analyses of efficiency of counter-terrorist legislation and relevant amendments;**
- **Border and immigration control, controls preventing trafficking in drugs, arms, biological and chemical weapons and their precursors and the illicit use of radioactive materials;**
- **Coordination of State agencies in all those areas.**

If possible, the Argentine Republic is requested to outline the legal provisions and other administrative procedures as well as the best practices that are applicable in this regard.

Argentina has created the necessary instruments and established an effective and coordinated executive machinery for the concrete application of laws aimed at regulating all aspects of Security Council resolution 1373 (2001) and at creating and utilizing appropriate national and international counter-terrorist strategies. As the Committee was previously informed, this was the reason for the creation of the Special Office on Terrorism and Related Offences (RETOD), within the Office of the Assistant Secretary for Foreign Policy of the Ministry of Foreign Affairs, International Trade and Worship, charged with the said coordinating functions. The creation of the Office has helped to improve the State's capacity to combat terrorism, with respect both to the regulatory environment and to operational coordination.

In this context, please note the name of the Argentine Republic's new focal point for matters related to the Counter-Terrorism Committee (referred to in the first report):

Ambassador Victor E. Beaugé
Special Representative for Terrorism and Related Offences
Ministry of Foreign Affairs, International Trade and Worship
Esmeralda 1212 Piso 10
Código Postal 1007
Tel: (54-11) 5555-8915
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Argentina's national strategy for, and commitment to the fight against terrorism have been embodied politically in many public statements by members of the Government. Those statements were confirmed by the Argentine President, Dr. Néstor Kirchner, in his inaugural speech of 25 May 2003, in his intervention

during the general debate of the fifty-eighth session of the United Nations General Assembly and in his address to the 2003 Monterrey Summit. They have also been given concrete form in the actions undertaken at the global level through the United Nations; at the regional level through the Organization of American States (OAS), the Inter-American Committee Against Terrorism (CICTE) and other specialized agencies; at the subregional level through the Triple Frontera and the 3+1 Mechanism; as well as at the national level. The underlying context for the actions undertaken and measures introduced at all these levels is the substance of the three previous reports submitted to the Committee, as well as the present report. It should be noted that RETOD has been meeting and coordinating actions with all the national agencies involved in counter-terrorism activities, focusing its management efforts on initiatives aimed at formulating standards and administrative procedures designed to ensure full compliance with Security Council resolution 1373 (2001) and its associated regulations.

There follows a brief account of Argentina's activities within OAS and CICTE, which may be of interest to the Committee.

The Argentine Republic took an active part in the third regular session of CICTE, held at San Salvador on 23 and 24 January 2003. During the session, participants identified threats to cybersecurity and countries' critical infrastructures as one of the new threats to regional security. The Argentine Republic was the venue for the OAS Conference on Cybersecurity, at which participants began to analyse the issue from the regional perspective. The Conference was held in Buenos Aires at the Ministry of Foreign Affairs on 28 and 29 July 2003, and was attended by delegations from Argentina, Brazil, Canada, Chile, Colombia, Costa Rica, Dominican Republic, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, United States of America, Uruguay and Venezuela.

The delegations considered various suggestions for increasing cooperation on the security of critical information technology systems and agreed to set up a working group to prepare the report to be submitted to the Committee on Hemispheric Security. The report was submitted to the Hemispheric Security Conference on 19 November 2003 by the Permanent Representative of Argentina to the OAS.

With regard to aspects or forms of counter-terrorism activities, the following should be mentioned:

- Counter-terrorist intelligence services. There are specialized units within the Intelligence Secretariat;
- Special forces operations. There are special forces operations within the PFA and the security forces, the GNA and the PNA, units that have especially trained officers. With regard to airport security, mention should also be made of the National Aeronautical Police (PAN), a unit of the Argentine Air Force.

All other aspects or forms of counter-terrorism activities are handled and implemented by agencies with specific responsibilities.

Special mention should be made of efforts being undertaken in the area of border controls, focusing attention on the progress achieved since Argentina submitted its third report, with respect to the tri-border Tripartite Command and within the framework of the 3+1 Mechanism. The goal of the 3+1 Group, which

comprises Argentina, Brazil, Paraguay and the United States of America, is to discuss and analyse measures to prevent terrorism, as well as training, the strengthening of financial institutions, legislation on money-laundering, the financing of terrorism and weapons and drug trafficking, border controls, cooperation and information exchange, and the enforcement of relevant laws.

The following are the key points of the communiqué issued on 3 December 2003 by the 3+1 member States following their meeting in Asunción, Paraguay:

- The member States confirmed that no operational terrorist activities had been detected in the tri-border region, according to the latest available information.
- They reiterated their desire to hold further meetings of the informal four-State 3+1 Mechanism, having found that the results achieved thus far were very positive and promising.
- With respect to joint patrols of Lake Itaipú and the adjacent waters, the Paraguayan delegation presented a trilateral draft operational agreement. It was proposed that a timetable should be drawn up with a view to adopting the agreement during the first half of 2004 and implementing it during the second half of 2004.
- The delegations indicated their desire to prioritize the effective implementation of integrated border control in the region. In that context, the Argentine delegation proposed that the integrated, computerized immigration control system recently agreed with Paraguay should be implemented in the tri-border region.
- The Brazilian delegation emphasized the need to prioritize cross-border securities transport, and proposed that a study should be conducted on experiences in that area, and that specific controls be formulated. The Argentine delegation suggested that countries' FIUs should meet during the second quarter of 2004 in order to address, among other questions, the formulation of controls on cross-border securities transport on a joint basis with representatives of customs and immigration services.
- The United States delegation offered to support training activities by providing courses and seminars on trade-related money-laundering and tax evasion for the financing of terrorism.
- The United States delegation offered to sponsor a programme of visits to its borders with Canada and Mexico, which was aimed at high-level border-control authorities. The programme would be implemented under CICTE auspices.
- The delegations reiterated the importance of intensifying the fight against money-laundering and the financing of terrorism, emphasizing the role to be played by each country's FIU. In that regard the Argentine delegation proposed that a focal point should be established for the exchange of information between all institutions involved in this activity with a view to standardizing criteria and maximizing the effectiveness of such exchange.
- The United States delegation suggested that a conference of FIUs from the 3+1 Group should be held with a view to improving communication, interaction, training and the development of information technology. At the conference,

Group members would also consider whether other countries might be invited to participate in future meetings.

- With a view to deepening inter-agency cooperation, the Argentine delegation stressed the need to encourage closer links among the regulatory agencies operating in the tri-border area. In concrete terms, it proposed that a meeting on that topic should be held during the coming year.

- Brazil renewed its offer to other countries to use the UIF in Foz de Iguazú as a regional centre. In this context, countries made a commitment to designate focal points as well as to select and train police officers during the first half of 2004. It is hoped that the Centre will become fully operational during the second half of 2004.

- With regard to security at ports and airports, the Group reiterated its determination to build on the recommendations of international agencies. The Brazilian delegation proposed that information exchange should be increased through the preparation of reports on cargo flights to airports in the tri-border area detected by Brazil's air-traffic control system. It called for the broadening of international cooperation with a view to improving the effectiveness of security systems at ports and airports.

- The Group affirmed its determination to ratify and implement international instruments on international terrorism, as well as the enactment of national counter-terrorism laws.

- The delegation of Paraguay informed the conference of progress made towards identifying and punishing those involved in alleged financial crimes and operating within the tri-border area. The delegations welcomed Paraguay's efforts.

- The United States delegation offered to extend to Argentina and Brazil the services of its Paraguay-based Advisor on Legal Affairs.

- The United States delegation presented its "Regional Defense Counterterrorism Fellowship program" and the four countries agreed that the fellowships would make a major contribution to the counter-terrorism effort.

As regards legal provisions and other administrative procedures, in addition to those mentioned in previous reports, the National Securities Commission (CNV) has issued General Resolution 456/2004 — attached as an annex — which updates the Commission's regulatory framework, incorporating regulations on the financing of terrorism in the chapter on the prevention of money-laundering.

1.12 Regarding the reference in the Argentine Republic's first report to article 210 of the Penal Code (page 9), please outline how the relevant Argentine legal provisions address recruitment to terrorist bodies, including:

- **Recruitment through deception, such as representation that the purpose of recruitment is different from the true purpose (e.g. teaching);**

- **Recruitment through other activities undertaken by people who do not actually belong to an unlawful association.**

With respect to the criminal liability of individuals seeking to bring together other individuals with the express intention of recruiting them to terrorist organizations, knowingly, through deception, and by concealing their true purpose from those concerned, article 210 of the Penal Code states that the recruiter is a member of the unlawful association because his or her actions contribute towards its illicit and unspecified aims. This effectively means that those who recruit others do so as members of the association.

The liability of the recruiter who commits the aggravated offence of unlawful association provided for in article 210 bis of the Penal Code is even clearer. Under this offence, the action of recruitment is more sharply defined since it covers, beyond all doubt, cooperation or assistance in the formation or maintenance of the unlawful association.

As regards the individuals recruited — that is to say, those who accept, freely and of their own volition, an invitation to carry out an activity with an apparently lawful object and purpose — they may not be accused of any criminal wrongdoing, since they are ignorant of the true purpose of the activity in which they have engaged or of the use to which its outcomes will be put. This is the case because such individuals are used as objects or instruments by whoever is functionally in control of the act. For these reasons, the recruiter, or whoever is functionally in control of the act, is considered to have committed the offence of unlawful association in concurrence with the offence indirectly committed by the recruited individuals. This last consideration arises due to the application of a legal concept known as vicarious liability, according to which the author of the offence is considered to be the individual functionally in control of the act.

With respect to the recruitment of other individuals who helped to commit the act, but who could not be considered members of the unlawful association, it is possible to consider the question according to their degree of involvement in the execution of the act — that is, whether or not their participation is considered criminal depends on whether it was essential to, or of secondary importance to, the main act (Penal Code, 45, 46, and 47). One may cite, for example, the case of an individual who provides accommodation for the assembly of members of the unlawful association knowing that such assembly is unlawful. In conclusion, within the terms of article 210 of the Penal Code, this type of cooperation may be regarded as criminal participation in the offence, either on an essential or secondary basis — whichever applies — without prejudice to the concurrence of the criminal accusation with the autonomous offence committed by the association as a result of that cooperation.

1.13 In the context of the effective implementation of subparagraph 2 (e), the Committee would appreciate knowing which special investigative techniques may be used in the Argentine Republic in relation to terrorism (e.g. interception of communications; electronic surveillance; observation; undercover operations; controlled delivery; "pseudo-purchases" or other "pseudo-offences"; anonymous informants; cross-border pursuits, bugging in private or public premises, etc.). Please explain what these techniques consist of, as well as the legal conditions that govern their use. The Committee is also interested in learning details such as: whether the use of these techniques is restricted to actual suspects; whether they may be utilized only with the prior approval of a court; whether there is a limit

to the time period in which they may be used. Could the Argentine Republic further indicate whether — and if so, how — these techniques could be used in cooperation with another State?

The Code of Penal Procedure (CPP) permits techniques for intercepting communications in proceedings that involve the investigation of any type of crime.

The criminal procedure is governed by the "freedom of proof" principle. The sole limitation regarding interferences in constitutional rights and guarantees is that they must be ordered by the judge through a properly substantiated decision (art. 123 CPP: "sentences and decisions must be properly substantiated, on penalty of nullity. Decrees must be properly substantiated, on the same penalty, when the law so provides"). Art. 206 CPP provides that "investigations shall not be governed by limitations established by civil laws regarding evidence, with the exception of those relating to the marital status of persons". This means that there are no limitations except for the grounds underlying the decision ordering the operation. Argentine legislation sets no limit other than the duty of the judge to respect the principle of proportionality with regard to interference, and of fairness with regard to the time period.

Electronic surveillance is provided for in article 236 of the Code of Penal Procedure, which states:

> "*The judge may order, through a properly substantiated decision, the interception of telephone communications or any other means of communication used by the defendant, in order to prevent such communications or to monitor them.*"

Such surveillance is permitted in investigations into any type of crime, if surveillance is necessary to solve such crimes, including the crimes of money-laundering or unlawful association. The judge decides the duration of the operation. If, when the time period expires, the operation must be renewed, the judge must issue a further order, based on a properly substantiated decision.

The information obtained through an electronic surveillance operation may be used in the judicial proceedings, provided that the defendant has been given the opportunity to review the evidentiary procedure and the grounds for the decision ordering the procedure. Communications surveillance comprises three stages: (a) it is ordered; (b) it is implemented; and (c) it ceases. With respect to the first two phases, the very nature and underlying rationale of secret surveillance require that it be carried out without the knowledge of the individual concerned, since obviously the observation measure can be effective only if at least one of those taking part in the telephone conversation is completely unaware of the operation.

Once the measure has been fully implemented, the defendant must be notified so that he or she can exercise his or her right to defence by verifying the legality of the surveillance measure and, if appropriate, participate in adversary proceedings concerning the admissibility of the evidence submitted in the action. The measure may lead to the lack of a proper defence if the individual concerned is not informed about the operation and thereby denied the opportunity to win the protection of this fundamental right.

There is no provision in the Code of Penal Procedure requiring that anybody involved must be notified of the existence or outcome of the operation. In order to

guarantee the right to defence, articles 200 and 201 of the Code, set out below, stipulate that the defence counsel must be notified that unrepeatable procedural actions are being carried out, including during the secrecy period:

Article 200:

"Defence counsel for the parties shall have the right to attend house searches, reconnaissance operations, reconstructions, expert examinations and inspections ... provided that such acts may, due to their nature and characteristics, be regarded as definitive and unrepeatable. The judge may permit the attendance of the defendant or the aggrieved party if it will help clarify the facts or is necessary due to the nature of the action. The parties shall have the right to attend house searches."

Article 201:

"Before proceeding with any of the actions set forth in the previous article — with the exception of house searches — the judge must order, on penalty of nullity, that the Public Prosecutor's Office, the plaintiff and the defendant be notified; however, the proceedings shall continue within the established time period, regardless of whether or not the parties attend."

If the crime under investigation is related to the law on narcotics, only those techniques provided specifically for this type of behaviour shall be applicable. They include:

- Undercover operations

Article 31 bis of Act No. 23,737 (Drugs Act) provides for the possibility of using undercover agents:

"During the course of the investigation and with the purpose of proving the commission of any offence covered by this Act or by article 866 of the Customs Code; to prevent its commission; to identify or detain those who commit, participate in or cover up the offence; or to obtain and secure the necessary evidence, the judge may, through a properly substantiated decision, and provided that the aims of the investigation cannot be otherwise achieved, rule that officers of the security forces, operating undercover:

May introduce themselves as members of criminal organizations whose goals include the commission of the offences set forth in this law or in article 866 of the Customs Code or participation in the commission of any of the acts covered by this law or by article 866 of the Customs Code.

The appointment order shall record the true name of the agent and the false identity under which he or she will be conducting the operation, and shall be kept separate from the proceedings and handled with the due degree of security.

Information discovered by the agent shall be immediately disclosed to the judge.

The appointment of an undercover agent shall be kept strictly secret. Whenever it is absolutely essential to submit as evidence the personal information of the undercover agent, the said agent shall give evidence as a witness, without

prejudice to the adoption, if appropriate, of the measures provided for in article 31 quinquies."

The authorization to deploy the agent shall be given by the competent judge with the sole limitation that the authorization must be made in a properly substantiated pronouncement. Any interference in constitutional rights and guarantees must be ordered by the natural judge through a properly substantiated order (art. 31 bis, Act No. 23,737 and art. 123, CPP).

The time period is decided by the competent judge, and the Act imposes no limitation in this regard. The time period may be renewed when necessary, on the same grounds as those of the original order, and always on the basis of a properly substantiated decision (art. 31 bis, Act No. 23,737 and art. 123, CPP). The judge in the case shall monitor the investigation and shall be kept informed of any discoveries brought to light by the investigation. As the Act itself states: "Information discovered by the agent shall be immediately disclosed to the judge."

The information obtained as the result of an undercover operation may be used as evidence during judicial proceedings. Undercover agents may in fact be called as witness in a trial, without prejudice to the issue of whether to keep their identity a secret after they have made a statement at an oral or public hearing. The Ministry of Justice, Security and Human Rights has established a national witness and defendant protection programme within the Department for the Protection of Witnesses and Defendants (Act No. 25,764, published in the Official Gazette of 13 August 2003).

• Controlled delivery

Act 23,737, art. 33 (as amended by Act No. 24,424, published in the Official Gazette of 9 January 1995, which added the second paragraph), established the principle of "controlled delivery" for investigations into drug trafficking.

The article states:

"*The judge in the case may authorize the prevention authority to defer the detention of persons or the seizure of drugs if he or she believes that the immediate implementation of such measures may compromise the success of the investigation.*"

The second paragraph of the article states:

"*The judge may also suspend the interception on Argentine territory of an illegal consignment of drugs and allow them to leave the country after being given assurances that the consignment will be monitored by the judicial authorities of the destination country. This measure shall be ordered by a properly substantiated decision, stating, as far as possible, the quality and quantity of the substance monitored, as well as its weight.*"

These techniques may be used in cooperation with other States, by order of criminal court judges who shall introduce such a measure at the request of another foreign magistrate and shall monitor the legality and proportionality of the measure, and its progress, in accordance with constitutional guarantees, within the framework of the aforementioned Act No. 24,767 concerning international cooperation in criminal matters.

The incorporation in the Argentine Republic of evidence obtained in a foreign country as a result of undercover operations, electronic surveillance or controlled

deliveries, or from informants or reformed criminals is not specifically regulated in Argentina's legislation on criminal procedure. However, since Argentina's Code of Penal Procedure provides for freedom of proof, there is nothing to prevent the courts from using evidence obtained through undercover operations or electronic surveillance in a foreign country, provided that the defendant is given an effective and genuine opportunity to verify the legality of the evidence and its consequences.

1.14 With a view to bringing terrorists and their supporters to justice, the Committee would be grateful to know whether the Argentine Republic has taken measures to protect vulnerable targets involved in the prosecution of terrorist crime (e.g. protection of victims, of persons collaborating in the pursuit of justice, of witnesses, of judges and prosecutors). Please describe the legal and administrative provisions put in place to ensure the protection of such persons. The Committee would also like the Argentine Republic to indicate whether — and if so how — these measures could be utilized in cooperation with, or at the request of, another State.

As part of the Argentine Republic's counter-terrorism efforts, the "Reformed Criminal Act" was introduced into law. Although this Act is intended solely as an instrument for reducing the penalty of the collaborating individual, and is not an investigative technique, the findings obtained as a result of the procedure can help clarify the facts of the case.

The Act (No. 25,241) concerns individuals charged with "terrorist acts", such acts being understood as "criminal acts committed by members of unlawful associations or organizations established with a view to causing alarm or terror, and employing explosives, inflammable substances, weapons or, in general, substances with significant offensive force, if they are capable of endangering the lives or integrity of a number of people" (art. 1).

For such cases, article 2 of the Act states:

"*In exceptional cases, the range of sanctions may be reduced to the level applied in the case of an attempted crime, or reduced by half, in the case of defendants who provide effective assistance to the investigation before the final sentence is passed. In order to qualify for this reduction the individual must provide information that is essential in preventing the commission or continuation of the offence or the perpetration of another offence, or that helps clarify the facts under investigation or other related facts, or that provides information that is manifestly helpful in proving the involvement of other persons, provided that the offence in which the beneficiary is involved is less grave than that in which the individual has offered or provided his or her collaboration.*"

Article 6 of the Act imposes a penalty of one to three years' imprisonment on anyone who has recourse to the Act and makes false statements or provides inaccurate information about third persons.

Article 7 of the Act provides for the establishment of a witness protection programme under the Department for the Protection of Witnesses and Defendants of the Ministry of Justice, Security and Human Rights (Act No. 25,764).

As indicated in the answer to the previous question, these techniques may be employed in cooperation with other States under the aforementioned Act No. 24,767 concerning international cooperation in criminal matters.

1.15 In the context of the effective implementation of subparagraph 2 (e), the Committee would appreciate receiving information relating to the number of persons prosecuted in the Argentine Republic for:

– Terrorist activities;

– The financing of terrorist activities;

– Providing support to terrorists or terrorist organizations.

How many of these persons have been prosecuted for soliciting support (including recruitment) for:

– Proscribed organizations; and

– Other terrorist groups or organizations?

In this regard, and with reference to terrorist acts with international links, mention should be made of the proceedings being conducted against those accused in the attack on the headquarters of the Asociación Mutual Israelita Argentina (AMIA) in the Argentine capital, Buenos Aires (Case No. 1156, entitled "Pasteur 633 — Attack (homicide, injury, damage); injured parties: AMIA/Delegación de Asociaciones Israelitas Argentinas, DAIA"). There are two trials in this case. The first is being conducted before the oral tribunal of Federal Criminal Court No. 3 of the Federal Capital, involving five defendants who are accused of direct involvement in the aforementioned attack as key participants in the offences of multiple homicide, injury and damage, aggravated under Act No. 23,592 against discrimination. A ruling in the case is expected soon. The second trial is being conducted before Federal Criminal and Correctional Court No. 6 of the Federal Capital and involves defendants subject to domestic and international arrest warrants.

Effectiveness of customs, immigration and border controls

1.16 Paragraph 2 of the resolution also requires States to prevent the movement of terrorists and the establishment of safe havens. In relation to international air transport, does the Argentine Republic compare the information contained in advanced passenger manifest programmes with the information contained in counter-terrorist databases with a view to scanning inbound passengers before they land?

Argentine consulates are responsible for issuing visas to foreign citizens wishing to enter Argentine territory. Before issuing the visa they are required to consult the United Nations web page that publishes the List of individuals and entities produced by the sanctions committees of the Security Council. It should be stressed that all Argentine consular offices have Internet access. Thus far, no consular office has reported identifying a visa applicant included on the list.

Entry into the Argentine Republic requires, in all cases, prior intervention by the immigration authority. In accordance with its powers, the immigration authority not only verifies the personal documents of the citizen entering the national territory, but also compares them with a master list, which will indicate any

ineligibility for, or impediment to, entry. In the case of any such ineligibility or impediment (including arrest warrants, search warrants, prohibition of re-entry and "alerts"), the immigration authority is informed and the immigration officer must alert the supervisor, who must take the necessary action (inform the authorities that issued the alert, hand the individual over to the auxiliary immigration police or the legal authorities, etc.).

On 21 January 2004 the new Immigration Act (Act No. 25,871) came into effect. Under the Act, entry into, or continued stay in, the Argentine Republic shall be denied to any foreign national who has a history of terrorist activities or of belonging to domestic or international organizations known to have been accused of actions that may be tried before the International Criminal Court or under Act No. 23,077 concerning the defence of democracy.

Article 29 of Act No. 25,871 states:

"*The following shall be grounds for denying foreign nationals the right to enter or remain in the national territory:*

(a) The submission, to a national or foreign authority, of documents that are materially or ideologically false or falsified. The penalty for this act shall be denial of the right to re-enter the national territory for a minimum period of five years;

(b) The fact of having been denied entry or having been subject to measures of expulsion or prohibition of re-entry, until such time as such measures have been revoked or until the time period imposed for this purpose has elapsed;

(c) The fact of having been sentenced or serving sentence for, in Argentina or abroad, or of having a history of, trafficking in weapons, persons or drugs, or the laundering of money or investments as part of illicit activities or of an offence punishable under Argentine law with a minimum of three years in prison;

(d) The fact of having committed or participated in State crimes or other, similar acts, including genocide, war crimes, acts of terrorism, or crimes against humanity or any other act that may be tried before the International Criminal Court;

(e) The fact of having a history of terrorist activities or belonging to domestic or international organizations known to have been accused of actions that may be tried before the International Criminal Court or under Act No. 23,077 concerning the defence of democracy;

(f) The fact of having been sentenced in Argentina for, or of having a history of, promoting or facilitating, for personal gain, the illegal entry into, continued stay in, or exit from the national territory by foreign nationals;

(g) The fact of having been sentenced in Argentina for, or of having a history of, submitting documents that are materially or ideologically false in order to obtain an immigration benefit for oneself or for a third person;

(h) The fact of having promoted or profited from prostitution; having been sentenced for, or having a history, in Argentina or abroad, of promoting or profiting from prostitution or carrying out activities related to trafficking in, or the sexual exploitation of, persons;

(i) The fact of having entered, or attempted to enter the national territory by evading immigration controls in a place or at a time not authorized for this purpose;

(j) Evidence of the existence of any of the impediments to remaining in Argentina set forth in this Act;

(k) Failure to comply with the requirements of this Act.

With respect to (a), the Federal Government reserves the right to try the individual in Argentina if the act may have implications for the security of the State or international cooperation or if it is possible to link the individual, or the facts with which he or she is charged, with other investigations under way in the national territory.

The Department of Immigration, following intervention by the Ministry of the Interior, may, on an exceptional basis, for humanitarian reasons, or for the purpose of family reunification, admit into the country, as permanent or temporary residents, foreigners covered by the present article, in each individual case through a properly substantiated decision."

Chapter VII of Act No. 25,871 contains provisions on offences against immigration law, including the criminalizing of illegal trafficking in persons in transit through or en route to the Argentine Republic, with penalties ranging from one to six years' imprisonment. These offences shall be aggravated if the trafficking in persons is carried out with the aim of committing acts of terrorism, trafficking in drugs, money-laundering or prostitution, with penalties ranging from 8 to 20 years' imprisonment:

Chapter VI: Offences against immigration law

Article 116: A sentence of imprisonment or detention for one to six years shall be imposed on anyone who shall promote or facilitate the illegal trafficking in persons within, in transit through, or en route to the Argentine Republic.

Illegal trafficking in persons shall mean the act of undertaking, promoting or facilitating the unlawful movement of persons across national borders for the purpose of obtaining a direct or indirect profit.

Article 117: A sentence of imprisonment or detention for one to six years shall be imposed on anyone who shall promote or facilitate the unlawful stay of foreigners in the territory of the Argentine Republic for the purpose of obtaining a direct or indirect profit.

Article 118: The same penalty shall be imposed on anyone who, by submitting materially or ideologically false documents, applies for any type of immigration benefit on behalf of a third person.

Article 119: A sentence of imprisonment or detention for two to eight years shall be imposed on anyone who commits the acts described in the previous article using violence, threats or deception, or exploiting a need of the victim or the victim's inexperience.

Article 120: The penalties set forth in this chapter shall be increased by 3 to 10 years when any of the following circumstances are proven:

(a) If the act was committed on a habitual basis;

(b) If a public officer or employee is involved in the act, in the exercise of his or her duties or through abuse of his or her position. In this case the individual shall be banned from performing public duties, absolutely and for life.

Article 121: The penalties set forth in the previous article shall be increased by 5 to 15 years whenever an immigrant's life, health or integrity is endangered or whenever the victim is a minor; and by 8 to 20 years whenever trafficking in persons is carried out with the aim of committing acts of terrorism, drug trafficking activities, money-laundering or prostitution.

With regard to the application of an advance passenger database, although this method is recommended in annex 9 to the Convention on International Civil Aviation, airlines do not yet have a system in place that would enable users to obtain certain information from passports or visas prior to boarding, transmit the information electronically, and analyse it prior to arrival in order to speed up the clearance procedure and enhance risk management.

1.17 Please outline the legal provisions and other procedures in place which govern the acquisition of Argentine citizenship and Argentine passports.

In Argentina, the acquisition of citizenship is regulated by Act No. 346 and its regulatory Decree No. 3213/84, as amended by Decree No. 231/95.

Argentina employs the principle of *ius soli* to determine citizenship. According to this principle, citizenship is granted to all those born on Argentine soil, regardless of their parents' nationality, with the exception of the children of ministers of foreign countries and the children of members of foreign delegations residing in Argentina who, even though they are born in Argentina, hold the citizenship of the country represented by their parents (art. 1, para. 1, Act No. 346).

However, the *ius soli* system recognizes an important exception in favour of *ius sanguinis*, in permitting children born abroad of native Argentine citizens to choose Argentine nationality. These children are recognized as Argentines "by choice", and it should be emphasized that they are regarded as Argentine citizens on a basis of equal rights with native Argentines.

Another exception in favour of *ius sanguinis* is found in the case of the children of Argentine officials or of Argentine citizens working for international organizations who are born abroad while their parents are serving abroad and are regarded as native Argentines on an equal basis with children born on Argentine soil (art. 91, Act No. 20,957 on Foreign Service: "Argentine citizenship shall be granted to the children of Argentine Foreign Service officials or of any Argentine national, provincial or municipal authority or employee of an international agency who is born abroad while their parents are serving abroad"). Applications for citizenship are handled by the federal justice system or, if the individual lives abroad and is under 18 years of age, by a consulate.

Argentine citizenship may also be acquired by a foreign national through a naturalization procedure handled by the federal justice system.

Applicants for naturalization must satisfy the following requirements:

(a) They must be at least 18 years of age;

(b) They must have lived continuously in the Argentine Republic for at least two years;

(c) They must demonstrate their desire to become a naturalized citizen to a judge;

(d) They must be lawfully employed or prove lawful means of subsistence;

(e) They must have no criminal record, either in Argentina or abroad.

Naturalization may also be granted to foreign nationals, regardless of their period of residence, provided that they satisfy the following requirements:

(a) They have a spouse or a child who is a native Argentine;

(b) They teach in any educational sector;

(c) They have served honourably as civil servants at the national, provincial or municipal level;

(d) They have served in the Argentine armed forces or participated in an act of war in Argentina's defence;

(e) They have established a new industry in the country, introduced a useful invention or performed any other action with a view to bringing moral or material progress to the country.

Argentine citizenship may not be denied on grounds of political belief, ideology, union affiliation, religion or race, or the private actions or physical appearance of applicants. However, without prejudice to the foregoing, the competent court may deny the request if there is sufficient evidence that the applicant has committed public acts representing the denial of human rights, the desire to overthrow the democratic system or the illegal use of force or the concentration of power.

Once Argentine citizenship has been duly granted, the naturalized citizen must take an oath before the acting judge and present himself or herself to the National Registry Office, which will process the relevant documents.

The principal types of Argentine passport are the following:

(a) Passport of the Southern Common Market (MERCOSUR), issued by the Argentine Federal Police;

(b) "C" series consular passport, issued by Argentine consular offices abroad, and expiring upon entry into Argentina;

(c) "A" series consular passport, issued by Argentine consular offices, solely to those wishing to return to Argentina.

Decree No. 2015/66 (Regulations on identity and travel documents of the Argentine Federal Police) and its subsequent amendments are the legal instruments regulating the issuing of passports by the Federal Police, which have sole competence in this area, with the exception of diplomatic and official passports, which are issued by the Ministry of Foreign Affairs.

Together with Decree No. 2015/66 Argentine consular offices abroad apply Decree No. 8714/63 (consular regulations), its rules of application and its subsequent amendments.

The Argentine Federal Police currently issue passports to native Argentines, naturalized Argentines and Argentines by choice. Also, on an exceptional basis, foreign nationals married to an Argentine citizen may be granted an Argentine passport in the following cases:

(a) If they cannot obtain a passport of their own nationality;

(b) If they have previously held a passport and are legally resident in Argentina.

Consular offices abroad may exceptionally issue a consular passport to foreign children (under age 18) of Argentine citizens, until such time as they choose Argentine citizenship.

1.18 With regard to whether security measures are consistent with international standards, as mentioned in Argentina's first report (p. 13), the Committee would appreciate knowing whether the International Civil Aviation Organization (ICAO) has conducted a safety audit of Argentina's international airports.

Since December 2002, when it launched the Universal Safety Oversight Audit Programme (USOAP), ICAO has not conducted a safety audit of Argentina's international airports, and evidently does not intend to do so during the current year, since no such visit is included in its 2004 timetable of visits.

Effectiveness of controls preventing access to weapons by terrorists

1.19 Subparagraph 2 (a) of the resolution requires each Member State, inter alia, to have in place an appropriate mechanism to deny access to weapons to terrorists. With regard to this requirement of the resolution as well as to the provisions of the Convention on the Marking of Plastic Explosives for the Purpose of Detection and the International Convention for the Suppression of Terrorist Bombings, please provide the Committee with information relevant to the following questions:

A) Legislation, regulations, administrative procedures

– What national measures exist to prevent the manufacture, stockpiling, transfer and possession of unmarked or inadequately marked:

Small and light weapons;

Other firearms, their parts and components and ammunition;

Plastic explosives;

Other explosives and their precursors?

Article 11 of annex I to Decree No. 395/75 regulating Act No. 20,429 (Weapons Act), states that "All military weapons manufactured in the country shall bear, in addition to manufacturing marks, a number (serial number) indicating the weapon category, located in the most prominent parts (barrels, frames, bolts, magazines, etc.). Weapons intended for civilian use shall bear the mark and serial number in a prominent location so as to be visible without showing part of the weapon".

The article's second paragraph states that firearms introduced into the country must also bear a manufacturer's mark and serial number. If these are not present, the provisions of article 13 of Decree No. 395/75 shall apply. Article 13 states that military weapons that are imported or introduced into the country and that do not bear the manufacturer's marks, or the serial number required under article 11, shall be submitted to the National Arms Registry (RENAR) which shall mark and number the weapons as it deems appropriate. In the case of arms intended for civilian use, the same procedure shall be used by the local monitoring authorities, which shall determine the numbers to be stamped on the weapon, in accordance with RENAR guidelines.

In the case of firearms not classified as military weapons, Argentina imposes penalties for their stockpiling (four to eight years in prison) and for their supply (three months to one year in prison) by anyone not lawfully entitled to use them (Penal Code, art. 189 bis, para. 5 and art. 189 ter), and the same penalties for the habitual sale of weapons (art. 189 ter, part 2). The same penalties shall apply, respectively, to anyone who possesses or stockpiles ammunition for military weapons, individual parts of such weapons, or material for manufacturing such weapons.

The Argentine Republic penalizes the stockpiling of military weapons (or individual parts of such weapons, or materials for their manufacture) and establishes an aggravated sentence if they are smuggled goods.

Article 1 of Act No. 24,492 prohibits the transmission of all types of firearms, regardless of their classification, and whether gratis or for payment, to anyone who is not an officially authorized user according to the official and sole authorization of RENAR, which is the agency responsible for the registration and control of all types of weapons under the National Weapons and Explosives Act No. 20,429 and the decrees regulating its implementation.

Argentine law provides for mechanisms to help detect operations for the manufacture of, and illicit trafficking in arms. These include the requirement for firms or requesting companies to be authorized to manufacture; to submit monthly manufacturing reports; to file operational reports on a quarterly basis, stating the name of the seller of raw materials (which is recorded), the name of buyers, together with the corresponding receipt of sale or purchase; as well as the requirements of end-users, which include the requirement to be a lawful user in any weapons category and to be in possession of the user authorization number previously provided by RENAR. The same is true of ammunition, which must be accompanied by documents stating the calibre, quantity and batch number, as well as the name of the purchaser (individuals or entities and, in the case of individual users, record of sale).

The only individuals or entities authorized to perform any action using weapons, ammunition or any controlled material (bullet-proof vests, armour plates, armoured vehicles, electronic defence devices, chemical weapons, etc.) and permitted to engage in their manufacture, sale, transfer, use, possession, import, export, etc. are those that are registered and authorized by RENAR in any category as lawful users, which include: individuals, groups (institutions using controlled materials either to provide for their security, e.g. banking security firms and armoured-truck security firms, or to provide security for others, e.g. private security firms, bodyguards, etc.), commercial users (those whose business is centred on

controlled materials, e.g. importers, exporters, wholesalers, retailers, etc.), collectors (who must own a collection of at least 10 collectible weapons or 100 collectible cartridges, and must take special security measures designed to prevent the theft or robbery of their collection), and gun clubs.

Once they have been tried, and by order of the competent court, the individuals concerned are struck from the national database of RENAR and in consequence may perform no further act of registration.

The aforementioned Act also establishes penalties ranging from six months to three years in prison for anyone who carries weapons for civilian use without the proper authorization. Without prejudice to the foregoing, anyone carrying a firearm without the proper authorization commits an administrative violation.

Article 189 ter provides for a prison sentence of three months to one year for anyone who supplies a firearm to an individual who is not authorized as a lawful user, without prejudice to any administrative sanctions that may apply.

B) Export controls

– **Please describe the system of export and import licensing or authorization, as well as measures on international transit, used by the Argentine Republic for the transfer of:**

Small and light weapons;

Other firearms, their parts and components and ammunition;

Plastic explosives;

Other explosives and their precursors.

Decree No. 657/95 (603/92 and 437/2000) establishes criteria for exporting military materials. All imported or exported materials are inspected by the National Commission for the Control of Sensitive Exports and Military Material. The Commission is composed of the Ministry of Production, the Ministry of Defence, the Ministry of Foreign Affairs, the Armed Forces Institute of Scientific and Technical Investigations, the National Space Commission, the National Atomic Energy Commission and the National Customs Administration (ANA), and is responsible for issuing export licences or end-user or import certificates approved by the Commission itself for the materials subject to control, in accordance with the lists of materials set out in the annexes to Decree No. 603/92 and its complementary regulations.

Exports of military weapons and explosives are regulated by Act No. 20,010 and must be authorized by the National Executive Power (Ministry of Foreign Affairs, Ministry of Defence and Ministry of the Economy).

With respect to exports of arms for civilian use or for conditional civilian use, Decree No. 760/92 states that exporting firms must apply to RENAR for authorization and verification of the materials to be exported.

Export permits are issued by RENAR upon presentation of the final-destination certificate issued by the destination country. When the materials leave Argentina they are comprehensively controlled by a verification commission, established in accordance with article 30 of Decree No. 395/75 and composed of RENAR, the Customs Office (DGA), PAN, PNA, GNA and the Customs

Transportation Agency. The procedure is recorded in an export materials verification certificate or an imported materials verification certificate, which includes information about weapon type, mark, calibre and serial number. In the case of ammunition, the certificate includes mark, calibre, quantity and batch number. The information will be entered into the national database for subsequent control and investigation of its sale.

RENAR recently introduced a new operational procedure for the control and registration of cross-border movements of arms, explosives and armoured vehicles. New instruments were introduced under the procedure, designed to systematize operational procedures by developing a more efficient computer system capable of ensuring that people entering or leaving the country with controlled materials provide the necessary personal and technical information concerning the materials being transported. To this end, steps were taken to revise operational agreements with the PNA and GNA, which are the agencies responsible for carrying out the aforementioned controls.

– **Please specify procedures of export control and existing mechanisms for the exchange of information concerning the sources, routes and methods used by arms traders.**

All imported and exported materials are checked by RENAR, the Customs Office, PAN, PNA or GNA and by the Customs Transportation Agency.

The procedure is recorded on the export materials verification certificate or the imported materials verification certificate, and the information is entered into the national database for subsequent control and investigation of its sale.

– **Is it necessary to submit a declaration and supporting documents relating to firearms prior to the import, export or transit movement of the goods, and if so, is there a requirement that they be verified? Are importers, exporters or third parties encouraged to provide information to customs authorities prior to their shipment? Please also outline any appropriate mechanism for verifying the authenticity of licensing or authorization documents for the import, export or transit movements of firearms?**

RENAR is responsible for issuing import and export authorizations and for verification of arms, ammunition, explosives, fireworks and controlled materials. The following documents must be submitted in this regard:

(a) Final-destination certificate for materials concerned;

(b) Authorization for export or import operation from the government agency of the country of origin or destination of the materials;

(c) Complete data concerning the exporter or importer in the country of origin or destination of the materials;

(d) Materials packing list;

(e) Customs clearance form;

(f) Sworn declaration by the importer or exporter to the effect that he or she understands the scope of the law in force;

(g) Forwarder's bill of lading;

(h) Original invoice of the exporter or importer;

(i) Certificate of quality of the exported materials.

All documentation related to the import/export of firearms (RENAR certificates and permits, transport documents, detailed declarations, declarations of value, etc.) is obligatory and is subject to verification prior to import or export, since arms are subject to the "regulatory red channel" (physical inspection and obligatory documentation). Importers/exporters are legally obliged to submit all the information to customs prior to shipment, since the absence of any document automatically halts the entire process.

With respect to customs procedures, the following should also be noted:

1. Arms for civilian use or for conditional civilian use: these are governed, with respect to imports and exports, by the resolution on the ANA, No. 3115/94 and its amending resolution, AFIP (Federal Administration of Public Income) No. 946/2000.

Briefly, the procedure is as follows: all operations are subject to the "obligatory red channel", according to which the customs officer submits the document (import order or authorization for shipment) to the Customs Office (DGA), and then to RENAR, which is attached to the Ministry of Defence. Once RENAR has authorized the operation, the inspection is carried out in the presence of a DGA inspector, a RENAR inspector and a PAN, PNA or GNA weapons expert, in the case of a primary customs zone, or the Federal or Provincial Police, in the case of a secondary customs zone (this is the case wherever an export is to be bonded in the exporter's warehouse). In such cases, a joint document is signed, and all agencies concerned retain a copy of the document.

2. Sensitive and dual-use materials (which could be used in the manufacture of weapons of mass destruction) are governed by the regulations for the control of sensitive exports and military materiel (Decree No. 603/1992 and its amendments).

The relevant procedures require prior authorization from the National Commission for the Control of Sensitive Exports and Military Materiel. The regulations apply only to exports because as soon as this type of material is exported, the country of origin immediately informs the Commission's counterpart in the country of destination.

3. Explosives: under Decree No. 37/01, customs operations involving explosives, which initially required prior authorization from the Department of Military Manufacturing, are now the responsibility of RENAR, which is attached to the Ministry of Defence. Consequently, they are dealt with according to the procedure set out in paragraph 1 above.

– **Has the Argentine Customs Office implemented intelligence-based risk management on borders to identify high-risk goods? Please describe the nature of the data required by customs administrations to identify high-risk consignments prior to shipment.**

Although it is difficult to exercise proper control over exports with the resources currently available, the customs authorities apply a selective risk-management system using certain intelligent criteria: container number; transport type, number and medium; identity and period of operation of importer/exporter;

agents or brokers; country of origin/destination; type of goods; details of triangulation arrangements, etc.

Some investigations have been carried out, but no incidents of illicit weapons trafficking have thus far been detected, except for a few isolated cases of attempts to export small arms by courier package, which were detected by scanner.

It may be said that virtually no information has been received from, or exchanged with any other security force concerning suspicious shipments of concealed weapons, except for a few Interpol reports on methods of concealing or camouflaging small arms (e.g. guns disguised as pens or cellular telephones, or hidden in briefcases, etc.).

However, it must be reiterated that no illegal weapons trafficking has been detected using the intelligent criteria described above (other goods have been detected in this way, however).

High-risk shipments are identified according to the relevant international regulations in force, such as Chapter VII, Part A, of the 1974 International Convention for the Safety of Life at Sea (SOLAS), which states that packages containing dangerous goods must be durably marked, showing the correct technical number and bearing clear labelling or identifying plates, whichever is appropriate. Also, all labelling must adhere to the provisions of the International Maritime Dangerous Goods (IMDG) Code, using the colours, labels and symbols appropriate to the risks associated with the goods to be transported.

C) Brokering

– What national legislation or administrative procedures exist to regulate the activities of those who engage in firearms brokering within Argentina's national jurisdiction and control? Please outline the relevant procedures with regard to the registration of brokers and the licensing or authorization of brokering transactions.

Argentina has no such legislation.

– Do Argentine laws require disclosure, on import and export licenses or accompanying documents, of the names and locations of brokers involved in the transaction?

There is no such requirement in Argentine law.

– Do legal provisions in place provide for the sharing of the relevant information with foreign counterparts in order to enable cooperation in preventing illegal shipments of firearms, their parts and components and ammunition, as well as explosives and their precursors?

On 17 October 2003 Argentina signed a memorandum of understanding with Brazil on the exchange of information concerning illicit trafficking in firearms, and is awaiting receipt of the diplomatic note from Brazil to confirm its entry into force.

A memorandum of understanding is also being negotiated within MERCOSUR on the exchange of information regarding firearms.

Information exchange of this kind is provided for in the Inter-American Convention against the Illicit Manufacturing of and Trafficking in Firearms,

Ammunition, Explosives, and Other Related Materials, which is in force in our country.

D) Stockpile management and security

– Please outline legal provisions and administrative procedures in the Argentine Republic to provide for the security of firearms, their parts and components, ammunition and explosives and their precursors during their manufacture, import, export and transit through its territory.

RENAR performs regular inspections of legally registered users and imposes sanctions for violations of the law.

RENAR and the police carry out inspections to determine whether facilities have adequate security measures in place, such as perimeter fences, alarm systems and closed-circuit television systems.

– What national standards and procedures exist for the management and security of firearms and explosives stocks held by Government of the Argentine Republic (in particular, those held by armed forces, police, etc.) and other authorized bodies?

RENAR imposes the following minimum requirements for weapons or ammunitions storage facilities:

- A suitable ventilation system must be installed, in order to provide a healthy working environment for warehouse staff, reduce humidity, and protect the stored materials against corrosion. A grille must be fitted across the doorway so that the warehouse door can remain open when staff are working inside, thus making the facility more secure, providing natural ventilation and keeping the temperature down. Mechanical ventilation systems (extractors), controlled by automatic timers, must also be installed.
- A local alarm system or remote monitoring system must be installed.
- An alarm button must be installed inside the warehouse, for use in case of emergency, and must be connected to the guardroom or surveillance room.
- The facility must be fitted with the necessary fire-safety equipment, consistent with the risk posed by the stored materials.
- The facility shall be kept in good order and ready for inspection at all times.
- The necessary signage must be used so that one or more types of weapon can be located (through posters, letters, numbers, etc.) and the origin or depositor identified (through provincial registration numbers, court numbers, etc.).
- A time period (ideally 180 days) should be established for the submission of requests for the Ministry of Defence to make a ministerial decision ordering the destruction of weapons or their donation to museums, the armed forces or the security forces.
- The warehouse manager and assistant manager, their superiors and authorized persons (accompanied by the manager) must have exclusive access to the warehouse to monitor the delivery or release of materials.

- There must be only one set of warehouse service keys, which shall be carried by the manager, and only the manager and assistant manager may know the alarm system deactivation code.
- Another set of keys and the alarm deactivation code must be kept by the organization's most senior official in a closed, sealed envelope, which should be opened only in an emergency or in a case of force majeure, subject to the proper authorization and in the presence of two witnesses.
- Special care must be taken to verify that received weapons are not loaded and to ensure safe handling of weapons, ammunition, gunpowder, grenades, etc., which must be stored separately and duly identified. Duly inspected and empty weapons should ideally be identified with a self-adhesive label bearing the appropriate reference or position code.
- A duly numbered document should be drawn up to record the receipt and release of materials into and from the warehouse.
- The operative data from such documents must be entered into a computerized database, which will be the official inventory of the warehouse of controlled weapons and materials.
- A special regular inspection ledger must be kept for recording inspections, controls, and supervision of the warehouse and thus verifying its orderliness, security, maintenance, presentation and cleanliness. Senior officials must carry out the controls referred to above, as well as random checking for weapons listed in the inventory, every two weeks at least, or when they deem it appropriate.
- Whenever responsibility for the warehouse changes hands or there is a change in the senior officials, an inventory of the warehouse contents must be drawn up. The inventory must be signed by the former and new authorities and by the officials overseeing and monitoring the procedure.

  – **Has the Argentine Republic implemented, using risk-assessment principles, any special security measures on the import, export and transit movement of firearms, such as conducting security checks of temporary storage sites, warehouses and means of transport carrying firearms, and requiring persons involved in these operations to undergo security vetting? If so, please give details.**

In the case of temporary storage sites, local monitoring authorities and RENAR perform regular warehouse inspections, and administrative sanctions are imposed for violations of the law. They also check to see whether facilities have adequate security measures such as perimeter fences, alarm systems and closed-circuit television systems.

With respect to transport security, RENAR requires that companies transporting significant quantities of weapons be escorted by a police guard, provided by the GNA or the PNA, a private security firm, or tracking by satellite or global positioning system (GPS).

RENAR performs regular inspections of legally registered users and imposes sanctions for violations of the law.

RENAR and the police carry out inspections to determine whether facilities have adequate security measures in place, such as perimeter fences, alarm systems and closed-circuit television systems.

E) Law enforcement/illegal trafficking

– What special measures are used by the Argentine Republic to prevent and suppress illegal trafficking in firearms, ammunitions and explosives that may be utilized by terrorists?

Article 863, chapter 1 (contraband), title I (customs violations), section XII (penal measures) of the Customs Code states that "A prison sentence of six months to eight years shall be imposed on anyone who, through any act or omission, prevents or hinders, through trickery or deception, the proper exercise of the functions accorded by law to the customs service for the control of imports and exports".

Article 865 (g) of the Code provides for "a prison sentence of 2 to 10 years for any of the cases set out in articles 863 and 864, if they involve nuclear materials, explosives, chemical weapons or similar materials, weapons, ammunition or materials considered as military-related, or substances or elements which, owing to their nature, quantity or characteristics, might affect public security. The penalty for the facts set out in this paragraph shall be applied provided that a greater penalty is not provided for in a special law".

Article 867 of the Code stipulates that in the cases set out in articles 865 and 866 neither exemption from prison, release from prison, nor provisional execution may be applied.

Under resolution No. 162 of 24 October 2003, the Ministry of Internal Security established a working group for the control and prevention of the use and control and illegal trafficking in firearms, ammunition, explosives and other related materials, which is attached to the executive department of the Domestic Security Secretariat.

The goals of the working group are to propose and promote policies, legislative reforms and courses of action to prevent the use and control of, and illegal trafficking in firearms, ammunition, explosives and other related materials, as well as to exchange experiences and promote studies and research in this area.

The resolution provides that working group members should be appointed from the Ministry of Justice, Security and Human Rights; the Ministry of Defence; the Ministry of Foreign Affairs; the Intelligence Department of the Office of the Presidency; other agencies of the national executive branch having related expertise; the legislature; and the Ministry of the Interior; as well as representatives of provincial governments, academia, non-governmental organizations and civil society.

– Do Argentine law enforcement agencies cooperate with the Interpol system for tracking firearms and explosives?

During 2003 the Ministry of Foreign Affairs held meetings with Interpol officials concerning cooperation on a tracking system. The Federal Police are Argentina's contact point with that agency, but according to their Interpol liaison department, there is currently no joint cooperation in this area.

2. Assistance and guidance

2.3 The Committee's Directory of Assistance (www.un.org/sc/ctc) is frequently updated to include new relevant information on available assistance. The Committee notes, with appreciation, that the Government of the Argentine Republic has offered to provide assistance to other States in connection with the implementation of the resolution and would appreciate receiving any updates to the information posted on the Directory of Assistance. Furthermore, the Committee would encourage the Argentine Republic to inform it of assistance it is currently providing to other States in connection with the implementation of the resolution.

Acting through the legal advisory department of the Ministry of Foreign Affairs, Argentina has reached an agreement with the Terrorism Prevention Branch of the United Nations Office on Drugs and Crime (UNODC) concerning the provision of training and technical assistance to the countries of Latin America through an interdisciplinary pool of experts, which has already carried out a number of missions.

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Security Council

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Letter dated 20 April 2004 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 28 January 2004 (S/2004/95). The Counter-Terrorism Committee has received the attached fourth report from Algeria submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex). I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Inocencio F. **Arias**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

04-32960 (E) 260504 260504

Annex

[Original: French]

Letter dated 19 April 2004 from the Permanent Representative of Algeria to the United Nations addressed to the Chairman of the Counter-Terrorism Committee

On instructions from my Government and further to your letter dated 16 January 2004, I have the honour to transmit to you herewith a supplementary report containing the response to the observations and questions of the Counter-Terrorism Committee concerning the third report submitted by Algeria, on 10 July 2003, pursuant to paragraph 6 of resolution 1373 (2001) (see enclosure).

The Government of Algeria stands ready to provide the Committee with any additional information that it may require or request.

(*Signed*) Abdallah **Baali**
Ambassador
Permanent Representative

Enclosure

Introduction

Since submitting its third national report on the implementation of Security Council resolution 1373 (2001), the Algerian Government has continued to enhance its anti-terrorist legislation. A working group established by the head of Government has drafted a bill on money-laundering and the financing of terrorism. After it is considered at the Government level, the bill will be sent to Parliament for approval.

The bill on combating money-laundering and the financing of terrorism provides for a range of mechanisms and measures to detect, prevent and combat these new types of crimes. The bill establishes in particular the obligation to report any dubious or suspicious operation to the Financial Information Processing Unit. Provision is made for criminal penalties against authorized persons found guilty of negligence, failure to report, failure to file a report or complicity in cases of misappropriation of funds for terrorist or money-laundering purposes.

Article 5 of the bill establishes the basic principle that any financial transaction constitutes a bank operation. This article reads as follows: "Any transfer abroad or from abroad of funds, securities or stocks must be performed by a bank or financial institution."

Any transaction involving amounts fixed by regulations that has not been carried out through banking and financial channels is regarded as an illegal operation of capital flight or money-laundering. Individuals or establishments which have deliberately or involuntarily facilitated such an operation bear criminal liability for their acts.

With the forthcoming adoption of the bill on money-laundering and the financing of terrorism and the incorporation in the Penal Code of new provisions on the suppression of money-laundering, Algeria will have completed its legal framework to deal with all questions related to terrorist activities and large-scale organized crime.

Amendments and changes will be introduced at the legislative and regulatory level as experience is gained in monitoring, investigation and coordination among the agencies concerned.

1. Implementation measures: effectiveness in the protection of the financial system

1.1 The Financial Information Processing Unit, established by decree No. 02-127 of 7 April 2002, is organizing its work with a view to launching its activities. Its chairman and other members, five in number, appointed by presidential decree of 10 February 2004 for a period of four years, have assumed office and developed their programme of work as well as rules of procedure. Installed within the Ministry of Finance, the Unit is an independent agency with legal status and financial autonomy.

1.2 The requirement that banks must report suspicious financial transactions is specified in decree No. 02-127 of 7 April 2002 concerning the establishment of the Unit. Such reports have legal standing and produce legal effects, on the penal level in particular, if the evidence supports the allegations.

The provisions relating to money-laundering will constitute the legal basis for the obligation to report suspicious financial transactions. Under article 19 of the bill, any transaction is considered suspicious if it is performed under unusually complex or unwarranted conditions, or appears to have no economic justification or legal purpose. The same definition is used in article 108 of the 2003 Finance Act.

There are many criteria for determining whether a transaction is suspicious. Algerian banks proceed on the basis of several variants:

- Unprecedented operations in the account history;
- Operations involving unusually high amounts;
- Operations that do not fit within the pattern of the account-holder's activities;
- Fleeting or sporadic operations;
- Large amount received from outside.

The obligation to report a suspicious transaction is a legal requirement. The above-mentioned decree No. 02-127, and articles 19 to 21 of the bill on money-laundering, state specifically that the "banks are responsible for informing the Unit of any situation that arouses suspicion, for the purpose of stemming suspicious transactions, promoting greater transparency and allowing for operations generating financial flows to be traced and measures to be taken to identify persons or entities initiating dubious or suspicious practices and, lastly, establishing responsibility at various levels in situations where the suspicions are confirmed". The obligation to report suspicious operations extends to any transaction that might prove to be wrongful or criminal.

In the event of breach of that obligation, the 2003 Finance Act gives the Unit the legal means of intervening in any circumstance, as banking and professional secrecy cannot be invoked against it. Article 33 of the bill on money-laundering and the suppression of the financing of terrorism stipulates the payment of a fine of between 50,000 and 5 million dinars in such cases, without prejudice to the application of other disciplinary and administrative penalties.

1.3 The Unit has launched an information and awareness campaign with banks, financial institutions and all other parties, whether legal entities or individuals, which are involved in the area concerned, to explain its goals and define future working and cooperative relations. The targeted institutions have been invited to designate their focal points, which will be the intermediaries authorized to collaborate with members of the Unit. The Unit has begun to establish working and cooperative relations with counterparts from other countries.

At the legal and procedural levels, the Financial Information Processing Unit will rely on its own constituent instrument, as well as a broader mechanism upon the entry into force of the act on money-laundering and the financing of terrorism.

1.4 The obligation to identify persons who operate trusts is established in the 2003 Finance Act. Article 16 of the bill [on money-laundering] requires banks and financial institutions to report and make available to the competent authorities any useful information on the identity of their clients, on the understanding that banking and professional secrecy is waived for the monitoring and investigative agencies.

Article 108 of the 2003 Finance Act imposes on all agencies authorized to conduct financial intermediary or similar operations the obligation:

- "To ascertain, on the basis of certified and official documents, the true identity of their usual and occasional clients, of persons on whose behalf such clients are acting when it appears that the latter are not acting on their own behalf";
- "To ascertain, by all legal means, the origin and destination of funds and the outcome of transactions that go through their books."

This statutory procedure is complemented by the internal practices of banks and financial institutions when accounts are opened. The applicant is required to identify himself by means of an identity document and proof of residence. Under certain circumstances, the legal services of banks and financial institutions are contacted to find out about the client's past history.

Article 9 of the bill on money-laundering and the financing of terrorism grants banks, in unclear situations, the right to enquire "by all legal means" about the identity of the true principal or beneficiary.

Lastly article 14 of the bill requires banks to preserve documents relating to the identity of clients and make them available to the competent authorities for a period of five years after the account is closed or the business relationship has ceased.

1.5 The absence of proven cases of money-laundering operations and financing of terrorism using the banking and financial system means that there are no statistics on sanctions imposed against Algerian financial and legal institutions for support of terrorist activities. The partial non-convertibility of Algerian currency and the system of foreign exchange control in force make it difficult to use the Algerian banking and financial system for the benefit of terrorist activities and organizations in Algeria or abroad.

Order No. 96-22 of 17 July 1996 on the suppression of infringements of the law and regulations on foreign exchange and capital transactions made full provision for the question of the financing of terrorism and of criminal activities by categorizing false reports, non-compliance with the obligations to report certain procedures, and lack of the required authorizations, as infringements of or attempts to infringe upon foreign exchange regulations. The importance attached to compliance with transfer procedures may be gauged from article 1 of the order, which highlights the principle that an offender cannot argue that he was acting in good faith.

Article 7 of the order stipulates that, "without prejudice to the criminal liability of its legal representatives, a legal entity governed by private law is responsible for offences committed on its behalf by its agencies or legal representatives".

Order No. 03-11 of 26 August 2003 on money and credit stipulates, in addition to a preliminary investigation, stricter conditions for setting up and establishing banks and financial institutions. Article 80 automatically excludes persons connected with drug trafficking and found guilty of money-laundering or the financing of terrorism from founding such institutions, administering them, directly or through an intermediary, and managing or representing in any capacity a bank or financial institution.

Article 91 of this order requires proof of funds and of their origin in order to establish a bank or financial institution. The initial capital for the establishment of financial institutions must derive from legal activities. Investors and stockholders must be identified.

Article 104 of the same order prohibits any loans by a bank or financial institution to its executives or shareholders and to their immediate relatives. Thus, any possibility of fraudulent or dubious operations has been eliminated.

Under article 12 of the bill on money-laundering and the financing of terrorism, the Banking Commission of the Bank of Algeria regularly monitors banks and financial institutions to check that transactions are legitimate and to uncover suspicious cases. Articles 19, 20 and 21 require all authorized individuals and bodies providing advice on or managing financial transactions, directly or indirectly, to report any suspicious transactions to the Unit.

The bill on money-laundering and the financing of terrorism now being adopted requires the authorities to conduct regular audits to ensure that financial institutions comply with the obligation to submit suspicious transaction reports.

Article 11 of the bill on money-laundering and the financing of terrorism mandates the inspectors of the Banking Commission of the Bank of Algeria, on the basis of on-site inspections as well as through verification of documents, to submit a confidential report to the Financial Information Processing Unit as soon as it discovers a suspicious operation.

Article 12 of this bill provides for bringing disciplinary action, under these conditions, against a bank or financial institution found to have failed to act or exercise proper internal control in respect of suspicious transaction reports.

The Banking Commission ensures that financial institutions have adequate programmes for detecting and preventing money-laundering and the financing of terrorism. The Unit is informed about the outcome of any action taken in that regard.

Banking regulations do not provide at present for the establishment and authorization of remittance agencies in Algeria. Foreign exchange bureaux exist, but in very limited numbers, and they do very little business. These bureaux are subject to banking regulations and auditing of exchanges by the Bank of Algeria.

They are also subject to regular monitoring and inspections by the Bank of Algeria and the Banking Commission.

Banks and financial institutions are audited frequently. Besides external audits by auditors accredited by the board of auditors, the Bank of Algeria carries out continuous inspection missions and in 2001 instituted comprehensive monitoring of the activities of all financial institutions. Frequent and intensified visits by the services of the inspector general's office of the Bank of Algeria made it possible to audit and monitor 35,000 foreign trade operations in 2003.

1.6 Following its ratification, the International Convention for the Suppression of the Financing of Terrorism applies to Algeria in its entirety. Article 18 of the Convention and paragraph 1 (a) of Security Council resolution 1373 (2001) apply to financial intermediaries and other agents authorized to conduct transactions in Algeria. The question relating to the identification of persons, entities and clients of banks was dealt with in relation to question 1.4.

Accountants and other agents engaged in financial transactions also have an obligation to identify their clients and report them to the competent authorities under the same conditions as are envisaged, in particular, under article 108 of the 2003 Finance Act. Financial intermediary or financial operations are subject to identification procedures on the basis of official and certified documents of the true clients. The latter are identified and reported to the Bank of Algeria and other banks and financial institutions during regular transactions and operations for transfer of funds or of capital within the limits set by the law and regulations on foreign trade.

1.7 Neither the above-mentioned order No. 96-22 of 17 July 1996 and order No. 03-11 of 26 August 2003 nor previous legislative and regulatory provisions refer to lawyers and notaries as agents authorized to engage in non-bank or quasi-financial transactions or in foreign trade, on their own behalf or on behalf of their clients. Furthermore, no statutory or legislative provision stipulates a particular role for accountants or other professionals in connection with financial transactions.

The activities of charitable associations are regulated by order No. 77.03 of 19 February 1977. Fund-raising operations by these associations are strictly controlled. When funds are collected within the territory of a *wilaya*, the local authorities are competent to grant or refuse authorization. If the fund-raising extends to two or more *wilaya*, a joint order of the Minister of the Interior and Minister of Religious Affairs establishes the practical arrangements. Only the administrative authorities with territorial jurisdiction are permitted to authorize, under particular conditions, fund-raising by an approved association, of recognized public value, which has first filed a written petition to substantiate the purpose of its request and the goals of its activities and also the identity of the members responsible for fund-raising and the destination of the funds raised. Any offences discovered such as the diversion or use of funds for subversive purposes are covered by penal law and are treated as criminal or terrorist activities. In addition to the penalties incurred by individuals involved in the diversion of funds, the association is dissolved for violating the obligations that regulate the functioning of non-profit organizations.

Authorization of fund-raising is valid for one day only, and house-to-house collections are prohibited. The authority that granted authorization may order an audit of the management of the contributions received. The police are also authorized to undertake an investigation, if necessary, of the management or destination of the funds collected.

Under article 372 of the Penal Code: "Any person who, either by adopting false names or attributes or employing fraudulent tactics ... in order to have sent or delivered to him, or to attempt to have sent or delivered, funds, movable property, bonds, promissory notes or receipts, defrauds or attempts to defraud another person of all or part of his wealth, shall be liable to imprisonment for a period of one to five years and a fine of 500 to 20,000 dinars."

If the offence is committed by a person who has made a public offering of stocks, bonds, notes, shares or securities of any kind, whether of a company or of a commercial or industrial enterprise, the period of imprisonment may be increased to 10 years and the fine to 200,000 dinars.

In the case of crimes characterized as terrorist acts, article 47.3 of the Code of Criminal Procedure authorizes the examining magistrate to conduct or arrange to have conducted by officers of the judicial police any type of search and seizure by

day or by night, anywhere within the national territory. The magistrate has the authority to order any type of preliminary injunction.

1.8 Western Union is the only agency specializing in the transfer of funds which is operating in Algeria. Transfers are made to Algeria through authorized banks and financial institutions, including Algérie Poste, the public agency responsible for the postal service. Western Union is linked with its Algerian partners by a special agreement. Transferred funds may be withdrawn upon presentation of identity documents.

Informal transfers of funds or assets are an activity that takes place outside official circuits and regulatory procedures. The conditions for transfer are regulated by order No. 96-22 of 1996 and act No. 03.01 of 19 February 2003 on foreign exchange operations and transfer of capital to and from other countries.

The mechanisms created to prevent money-laundering or the financing of terrorism are those described and established in banks and financial institutions. Informal transactions are difficult to control. This aspect pertains to criminal activities that fall with the competence of the national police and national gendarmerie.

The two security bodies, whose officers have the status of judicial police officers, operate under the authority of the Prosecutor of the Republic, who has territorial jurisdiction over the suppression of organized crime, terrorism and other subversive activities, counterfeiting and the fraudulent use of funds and financial assets for any purpose whatsoever.

It should be noted that the hawala-type transfers that exist in some countries are not practised in Algeria. Funds transfers remain subject to the legislation and regulations on foreign exchange in force.

Inquiries, investigations and audits conducted as well as judicial information gathered result in criminal proceedings and convictions by the courts of individuals found guilty of such criminal activities.

1.9 The campaign against money-laundering and suppression of the financing of terrorism is being extended in legal terms by the drafting of the bill to prevent and suppress these illicit activities, which will soon be adopted and implemented. The above-mentioned articles 19, 20 and 21 of the bill establish the obligation to cooperate with the Unit.

1.10 In addition to the provisions of article 19 mentioned in the reply to question 1.12, articles 20 and 21 expand the obligation to submit suspicious transaction reports to cover the regulated liberal professions, including lawyers, notaries, auctioneers, accountants, auditors, brokers, customs agents, foreign exchange dealers, stockbrokers, estate agents and dealers in precious stones, antiques and works of art.

1.11 The gathering, dissemination and sharing of information is the key to the success of any investigation and inquiry in connection with the prevention and suppression of money-laundering and the financing of terrorism. In that respect, the Unit and the Bank of Algeria are endeavouring to create the conditions of transparency and efficiency which are necessary to the success of efforts to prevent the use of the banking network for criminal and terrorist purposes.

The ongoing training of State agents is indispensable for the public service to operate properly. Particular importance is accorded to advanced training of the personnel of banks, security services, the gendarmerie and customs as well as to the modernization of equipment and improvement of working conditions. Reforms have been introduced to ensure optimal functioning of the available resources. Beginners', retraining and advanced training courses are regularly organized for officers of the judicial police concerning financial offences related to organized crime and terrorism.

Courses and seminars are led by academics and specialists in law, criminology and financial investigations. Short training periods have also been proposed in the context of cooperation with certain countries and international organizations. The European Union has recently proposed a course in the framework of a programme of support for the modernization of the police.

Responsibility at the juridical level for the suppression of money-laundering and the financing of terrorism requires practical and technical training of agents dealing with this matter, which will now form part of the tasks entrusted to the various security services. These services have an obligation to achieve results in the framework of a broader mission of preventing and combating terrorism and organized crime.

1.12 Algerian law and all the legislative provisions on combating terrorism incriminate terrorist activity in all its aspects. Since the adoption of act No. 95-11 of 25 February 1995 and subsequent measures, the goal has been to criminalize any act directly or indirectly linked to a terrorist undertaking. The draft amendment to the Penal Code makes terrorism an imprescriptible crime in itself, which should be considered as such under all circumstances.

With respect to the financing of terrorism, under Algerian law it is not necessary that the funds should actually be used for the activity to be characterized as criminal. The physical organization of fund-raising and the intention to use funds for criminal and terrorist purposes are sufficient for the individuals involved to be found guilty of terrorist activities either in Algeria or abroad. This is valid even in the event that no act has been committed or attempted, no transfer of funds has been made from one country to another or the funds used are of a legal origin but the goal is criminal. Algerian law focuses at the same time on the evidence, the intent, and the chain of responsibilities, the decisive factor being membership in a terrorist group or the intention to commit a terrorist act.

The offence has all the constituent elements of a terrorist act. The penalties incurred are those stipulated for terrorist crimes.

Article 2 of the above-mentioned bill characterizes the financing of terrorism as an offence as follows: "Any person who, by any means whatsoever, directly or indirectly, unlawfully or deliberately, provides or raises funds, with the intention of using all or part of them to commit crimes and offences characterized as terrorist or subversive acts commits the offence of financing of terrorism."

The bill provides that the collection of funds for the purpose of financing terrorism committed in the national territory or abroad constitutes a criminal offence on condition that the alleged acts are characterized as a criminal offence in the country in which they were committed.

1.13 The question of freezing funds relates to funds and assets that are used to finance terrorism or that are the proceeds of terrorism or money-laundering. Individuals found guilty of the financing of terrorism incur a penalty for involvement in a terrorist undertaking and for the financing of a terrorist activity. The freezing and confiscation of funds and assets involved in the offence are also required in the event that the facts are proven. In such event, the perpetrator or perpetrators found guilty of criminal acts bear sole criminal liability.

Persons acting on behalf of terrorist or criminal groups are treated in the same way, depending on whether they were the perpetrators of terrorist acts or were found guilty of complicity in the financing of a terrorist activity. The sentence of the court covers both criminal prosecution and the freezing of assets.

The bill on money-laundering strengthens the precautionary procedures in respect of the seizure and freezing of assets and gives the Unit the ability to order, for precautionary purposes, for 72 hours, the suspension of any banking operation and the freezing of the bank accounts of any individual or legal entity against which there are strong suspicions of money-laundering or the financing of terrorism.

Furthermore, at the request of the Unit, in accordance with article 18 of the bill, the president of the court may extend the period of 72 hours or order the seizure of the funds, accounts or securities mentioned in the report. The order that gives effect to the request is immediately enforceable.

Article 19 obliges "any individual or legal entity which, at the professional level, carries out or advises on operations involving deposits, exchanges, investments, conversions or any other money transfers to report to the Unit any operation concerning funds apparently derived from a crime or intended for the financing of terrorism. This obligation also involves, under article 20, affiliated financial institutions, insurance companies, foreign exchange bureaux, mutual benefit societies, betting, gambling and casinos.

The freezing of funds involves the funds belonging to individuals responsible for the financing of terrorism without any distinction whatever. Algerian law is concerned with material facts, and the penalties incurred are the penalties envisaged under the Penal Code for acts of terrorism.

1.14 The law is the juridical basis for characterizing acts of terrorism. Act No. 95-11 gives a definition of terrorism, as do provisions of both the Penal Code and Code of Criminal Procedure mentioned in this report and in previous reports sent to the Committee and Sanctions Committee.

Concerning terrorist organizations active in Algeria, the Djaz'ara should be included with the Groupe Islamique Armé (Armed Islamic Group) (GIA), Groupe Salafiste pour la Prédication et le Combat (Salafist Group for Proselytism and Combat) (GSPC) and Djamat Houmat Daawa Salafia (DHDS) on the Sanctions Committee list.

The Djaz'ara is a terrorist organization comprised of Algerians who fought in Afghanistan and then joined the disbanded Front Islamique du Salut (Islamic Salvation Front) (FIS). It is one of the armed units of FIS. Its leaders, who operate from abroad under the name Bureau Exécutif National or Instance Exécutive d l'ex FIS, have publicly called for the murder and assassination of politicians, intellectuals, journalists and civil servants and for the destruction of public and

private property. They have rejected the Act on the restoration of civil harmony, which was designed to establish a legal framework for the return and reintegration into society of terrorists by releasing them from prison or reducing their sentences.

This organization has offices abroad and its members are involved in trafficking in weapons and ammunition and fund-raising to finance terrorist activities in Algeria. The links between this organization and al-Qa'idah have been proven and several of its leaders have been part of or close to the upper echelons of the Taliban.

The following individuals, six Malian nations and one Mauritanian, are taking an active part in terrorist activities carried out by the Groupe Salafiste pour la Prédication et le Combat (GSPC) in Sahelian countries and beyond. In particular, they provided weapons that terrorists from GSPC were meant to have smuggled into Algeria in January 2004. These weapons were intercepted on 23 January 2004 by the Algerian army in the region of Ain Salah in Algerian territory.

The Sanctions Committee has been given this list:

- Lieutenant Colonel Mohamed Abderrahman Ould Meiddou, officer of the Malian armed forces;
- Commander Seidou Safari, officer of the Malian armed forces;
- Ben Salah Osmane, Malian soldier;
- Baba Ould Chouikh, Malian national, businessman in the town of Gao, Mali;
- Mohamed Ould Laouinet, Malian national;
- Mustapha Ould Laouinet, brother of the above, both based in Gao, Mali;
- Abdelfettah Ould Marakchi, Mauritanian national, businessman residing in Nouakchott, born in 1954 in Akloujt, son of Merakchi Ould Ghade and Mounira bint Taleb.

To date, no banks and financial institutions have discovered funds intended for the financing of terrorism or received information on such transactions, including from their foreign partners. There has therefore been no freezing or confiscation of the proceeds of offences.

1.15 Concerning the designation of a terrorist group or organization, legislative decree No. 92.03 of 30 September 1992, as amended and supplemented by legislative decree No. 93.05 of 9 April 1993 as well as article 87 bis of order No. 95.11 of 25 February 1995 of the Penal Code, characterizes as terrorist "any offence against national security, territorial integrity, or the stability and normal functioning of institutions by any action aimed at:

- Spreading fear among the population and creating a climate of insecurity by harming persons morally and physically, endangering their lives and freedom, or damaging their property;
- Impeding freedom of circulation and of movement on transportation routes and occupying public spaces with large crowds;
- Violating symbols of the nation and of the Republic and desecrating burial places;

- Harming the environment, means of communication and means of transport;
- Obstructing the operation of public institutions and the activities of public authorities, freedom of conscience and civil liberties;
- Obstructing the operation of public institutions or harming the life and property of their agents, or obstructing the enforcement of laws and regulations.

Article 87 bis, paragraph 3 of the Penal Code characterizes the following additional activities as terrorist acts:

- Establishment of associations, bodies, groups or organizations aimed at carrying out subversive or terrorist activities;
- Support for, or participation in, the activities of those organizations, in any form whatsoever;
- Advocacy of terrorism, encouragement and financing of terrorist activities;
- Reproduction and dissemination of printed documents or recordings advocating terrorism.

Algeria supports the definition of terrorism set forth in the Conventions of the Organization of African Unity (OAU) and League of Arab States, both of which it has ratified. It is on these legal foundations, and on the basis of investigations by the security services and the judicial authorities, that a terrorist organization is designated as such.

Requests for judicial assistance emanating from foreign Governments are treated in accordance with the provisions of the Algerian Code of Criminal Procedure and the bilateral and multilateral instruments in force. In the event that the intelligence and information requested fall within the purview of cooperation between the judicial police services responsible for suppression of the financing of terrorism and transnational organized crime, the competent services work together, directly or through the International Criminal Police Organization (Interpol), for the purpose of monitoring judicial proceedings.

All requests concerning terrorist acts and activities are handled promptly. In accordance with Security Council resolution 1373 (2001), Algeria has signed agreements on judicial assistance and hopes to be able to finalize the proposals made in that regard with some of its partners.

1.16 Algeria has proposed a series of measures to its partners for the purpose of expanding the political, diplomatic and operational foundations of productive cooperation. Some draft agreements on cooperation have been submitted to certain countries.

1.17 The Counter-Terrorism Committee should take an active part in promoting agreements on cooperation between States. It should urge countries to respond to requests from their partners in that regard.

1.18 The procedure for the ratification of the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms Located on the Continental

Shelf is under way. The implementation in domestic law of the international instruments relating to terrorism is taking place systematically in accordance with the Algerian Constitution, under which all ratified international agreements take precedence over domestic law.

Counter-terrorism machinery

1.19 The Algerian courts have jurisdiction over terrorist activities in which nationals are involved even if the alleged acts are not directed against Algeria or its interests abroad. With respect to situations in which a foreign national residing in Algeria is accused of having committed a terrorist act abroad, the Algerian courts also have jurisdiction if the legal requirements for criminal prosecution are met. The sentence will be handed down on the basis of the provisions of the Penal Code and the Code of Criminal Procedure concerning terrorist activities. The penalties incurred are those provided for by the law.

The application of the legal principle of "prosecute or expedite" is integrated into Algerian law. Article 588 of the Code of Criminal Procedures gives Algerian courts jurisdiction to prosecute and try any foreign national accused of committing a crime or offence against national security. Article 582 stipulates that any act characterized as a crime committed by an Algerian national outside the national territory may be prosecuted and tried in Algeria. Article 583 provides for criminal proceedings which an offence is committed abroad by an Algerian.

Requests for extradition of foreign nationals residing legally in Algeria are governed by articles 694 et seq. of the Code of Criminal Procedure and by the bilateral and multilateral agreements ratified by the Algerian Government. It should be noted, moreover, that the situation of foreign nationals in Algeria and the conditions for entry and residence are governed by act No. 66.211 of 21 July 1966. Articles 20 et seq. govern the conditions for expulsion and the penalties incurred in the event of violations or reprehensible activities.

The importance that the Algerian authorities attach to issues of extradition, assistance and judicial cooperation has led them to make proposals to their partners to adopt relevant legal instruments. Agreements have been signed and ratified, of which some are being finalized and others are awaiting implementation.

1.20 Algeria remains firmly opposed to the granting of political asylum to wanted terrorists and criminals. The right of asylum is nullified when criminals take advantage of it under false pretexts of their persecution in their countries of origin, where they have contributed directly or indirectly to causing death and destruction among civilian populations.

In some countries asylum laws continue to be exploited by terrorist organizations and individuals directly involved in terrorist acts in their countries of origin, or advocating terrorism, preaching hatred and intolerance and publicly calling for murder. This erroneous interpretation of the right of asylum has led Algeria to issue reservations and sometimes express doubts concerning the willingness of some of its partners to cooperate.

The legal provisions which are in place in Algeria are consistent with the country's commitment to combat terrorism and accord with ratified international instruments such as the Conventions of OAU and the League of Arab States.

1.21 The table below provides available data on persons brought to justice for membership in terrorist organizations.

		Number of cases linked to terrorism			
Year	*Number of persons prosecuted for terrorist acts*	*Establishment of and membership in an armed terrorist group*	*Encouragement and advocacy of terrorism*	*Other breaches of national security*	*Total*
1997	17 678	2 100	949	788	3 837
1998	15 191	1 628	720	390	2 738
1999	12 927	1 033	297	168	1 498
2000	8 538	837	363	294	1 494
2001	3 650	549	160	469	1 178
2002	3 267	845	278	333	1 456
2003	3 398	537	104	208	849
Total	**64 649**	**7 529**	**2 871**	**2 650**	**13 050**

Customs, border and immigration controls

1.22 Border controls, including customs, are essential to national security. Customs has traditionally been responsible for controlling the cross-border movement of cash, negotiable instruments, precious stones and metals. Given that illicit trafficking is very common for such merchandise, there is a need for adequate equipment, painstaking work and solid expertise to thwart such illegal practices. The customs administration has acquired scanners and detection equipment that enable it to meet international standards and play its part efficiently. The training of customs officers in monitoring and surveillance techniques has allowed this body to acquaint itself with and also adapt to the methods used by traffickers and smugglers.

The quantity of precious metals held by persons who enter or leave the national territory is restricted to 100 grams of gold, silver or platinum. For quantities exceeding that weight, a customs declaration is required, accompanied by the standard forms and the necessary authorizations, such as bank certification.

Failure to present documents proving the nature of the transaction results in seizure, that is carried out without prejudice to judicial proceedings.

No restriction on the import of cash is imposed other than a customs declaration, on the basis of a specific form to be filled out by the importer. The export of currency for persons travelling abroad for private purposes is authorized through a bank up to an amount equivalent to 8,000 euros. Businesses, for their part, are subject to another regime that consists of applying to their banks in the context of their commercial activities.

1.23 The legal and administrative procedures developed by Algeria to protect its port facilities, ships and persons working there from the risks of terrorist attacks are provided for through the implementation of internal security arrangements for buildings.

Decree No. 84.385 of 22 December 1984 specifies the measures aimed at protecting installations, facilities, and equipment at ports and airports. Executive

decree No. 94.340 of 25 October 1994 launched the establishment of the National Committee for Port Security and the Committee on the Security of Civilian Commercial Ports. This Committee is the body authorized at the national level to ensure the protection and security of port facilities. It verifies the implementation of measures enacted and of recommendations, including those provided for by relevant international instruments ratified by Algeria.

Other legislative and regulatory measures have been adopted in the light of assessments of the security situation and trends in the volume of traffic of merchandise and persons. Thus, the Commissariat for Port and Airport Security was created by executive decree No. 95.192 of 10 July 1995.

This regulatory text was supplemented by order No. 95.24 of 25 September 1995 on the protection of the public heritage and the security of persons affiliated with it. A decree was adopted to implement the provisions of the above-mentioned order which provides for practical internal security arrangements for port and airport buildings and areas.

Lastly, Decree No. 98.410 of 7 December 1998 establishes ministerial offices for internal security of buildings and defines their functions with respect to the security of property and persons located in them.

To prevent and thwart any internal or external attempt at theft, destruction, damage or attack against installations, facilities or merchandise and personnel working there, strict security rules are in place. Facilities and sites within areas are classified into several categories depending on their importance. A security perimeter is demarcated and put into effect and protection measures are then taken.

Internal and external security of sites is ensured by authorized personnel. According to order No. 95-24, site managers have active and passive means of ensuring security, for which they bear criminal liability.

A national commission on the classification of sensitive sites established under the aegis of the Ministry of Defence is mandated to determine measures to be taken to ensure the security of such sites.

Furthermore, Algeria is a party to the relevant international agreements and is implementing the recommendations of the International Maritime Organization concerning combating acts of terrorism in the maritime sector.

Lastly, with regard to the security of transport infrastructure, the enforcement of the International Code for the Security of Ships and Port Facilities (ISPS), which is at an advanced stage, will be progressively extended to all the country's ports.

Controls preventing access to weapons by terrorists

1.24 The production, import, export and use of firearms are governed by the provisions of order No. 97.06 of 21 January 1997. This legislative text clearly set forth the conditions for the possession of various categories of weapons by individuals and legal entities and provides for penalties of rigorous imprisonment for any illegal possession of firearms.

In accordance with article 87 bis, paragraph 7 of the Penal Code: "Any person who possesses, obtains, carries, markets, imports, exports, manufactures, repairs or utilizes weapons or ammunition without authorization from the competent authority

is subject to a penalty of rigorous imprisonment for a period of 10 to 20 years and a fine of 500,000 to 1 million dinars."

Furthermore, order No. 97.06 of 21 January 1997 grants the State a monopoly over the acquisition, production and import of military weapons of various categories.

Executive decree No. 98.96 of 18 March 1998 sets forth the conditions for granting authorization to individuals or legal entities, excluding those who have been convicted or have committed crimes or offences. Authorization may be withdrawn if it is established that the holder has ceased to fulfil the required conditions or has committed an offence.

Arms brokering activities, registration of brokers and licensing and authorization of brokered transactions, identification of brokers and disclosure of their names in transactions are all regulated.

Moreover, article 22 of decree No. 98.96 requires authorized brokers to maintain a special register that the services of the Ministry of Defence and Ministry of the Interior may consult at any time. An inventory is also required, and any import or export of war equipment is subject to control before it is routed.

The sharing of information with foreign counterparts for the purpose of preventing illegal shipments of firearms and other arms components takes place within the framework of bilateral and multilateral cooperation between the various administrative and security services. The customs services at ports and airports play a crucial role of surveillance and monitoring but also act on information from their counterparts in foreign ports and airports. The cooperation of the various security services located in port and airport areas allows for greater effectiveness and speed in the monitoring of merchandise bound for Algeria or in transit.

2. Assistance and guidance

2.1 Algeria is anxious to maintain working and cooperative relations with the Committee. Its participation in the work of the Security Council will enable it to strengthen that relationship and contribute to the process of revitalization of the Committee.

2.2 Algeria and its partners are discussing programmes of cooperation to be implemented and specific needs in the area of counter-terrorism. The current needs mainly involve:

- The training of 60 managers and police officers in the areas of research, methods, techniques and use of intelligence in order to identify and track the various concealed financial circuits as well as funds and assets of suspicious origin.
- The organization in Algeria and participation of banking and financial managers in specialized seminars and workshops in the area of combating money-laundering and the financing of terrorism.
- A classification system for the design of a specialized training module for officers of the police, customs, justice system, banks and the Unit on investigative techniques in the area of money-laundering and the financing of terrorism.

Algeria has also undertaken consultations with certain countries to determine possible areas of cooperation. It stands ready to make its contribution and work with its partners at the political, diplomatic and operational levels to halt criminal activities of terrorist groups throughout the world.

2.3 Algeria has already mentioned in its previous national reports the countries with which it has signed bilateral agreements. It will inform the Committee of any new agreements it may conclude.

Conclusion

The Algerian Government hopes that it has provided the clarifications requested and given useful details on the new measures taken since the submission of its previous national report.

Directly confronted by transnational terrorism, Algeria acquired at an early stage an arsenal of laws to combat this scourge. It has constantly enhanced this mechanism on the basis of its own experience and in accordance with the international norms in force.

Algerian law now criminalizes all terrorist activities. The penalties incurred are severe and the Algerian courts characterize as terrorist activity any action which contributes directly or indirectly to the commission of such acts. The judicial characterization now extends specifically to money-laundering as well as terrorist undertakings and their links to organized crime.

The law on the prevention and combating of money-laundering and the financing of terrorism and the corresponding amendments that will be made to the Penal Code will supplement the legislative measures instituting monitoring and investigative processes aimed at suspicious banking operations and prevention and suppression procedures.

The Financial Information Processing Unit will have a crucial role to play in that respect. The international contacts that it has already established reflect its willingness to ensure true momentum, and the authorities are resolved to obtain for it all the necessary material and institutional means to accomplish its mission.

The rapid modernization of the customs services and the police stems from the same concern to adapt to international standards.

Nevertheless, Algeria is aware that its own efforts require firm international support.

It is imperative that international cooperation should progress further and produce more specific results on the ground, particularly in the judicial area. The Committee must give greater attention to the legal and political obstacles that persist in this regard: the international community can and must do much more to meet the challenges of international terrorism.

In that regard, Algeria places much hope in the process of revitalization of the Counter-Terrorism Committee, which it has strongly advocated. It is counting, in particular, on more active efforts to implement an essential dimension of Security Council resolution 1373 (2001): the obligation of all countries to cooperate fully and in good faith in all the areas of counter-terrorism.

International efforts to combat transnational terrorism constitute a complex, long-term undertaking, and its success depends on a clear and sustained political commitment from the entire community of nations.